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The Proposed Constitution For North Carolina

A Comparative Study

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Associate Director, The Institute of Government

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Chief Justice W. P. Stacy, Dr. Clarence Poe, and Commissioner A. J. Maxwell, members of the Constitutional Commission; Senator Capus M. Waynick, Chairman of the Senate Committee on Constitutional Amendments, and Attorney-General Dennis G. Brummitt, each contributed, upon request, papers used as source material herein and have given freely of their time and attention in considering matters embodied in the manuscript.

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The studies of particular constitutional questions made for the Constitutional Commission by the Law Schools of the University of North Carolina and Duke University have been frequently consulted and relied upon.

The assistance of Albert Coates, Director, and Henry P. Brandis, Jr., and T. N. Grice, Associate Directors, of The Institute of Government, as critics and advisers has been freely invoked throughout the preparation of this study.

FOREWORD

The Legislator's division of The Institute of Government last year undertook to interpret the laws of the General Assembly of 1933 to City and County officials whose duty it was to apply them and to citizens concerned with their application. This was done (1) through summaries of local legislation bearing upon each local governmental unit sent to local officers and the local press, (2) through a two hundred and sixty-three page summary of the general legislation affecting state and local units sent to state and local officers and the press, (3) through discussions by state and local administrative officers in the 1933 sessions of The Institute of Government.

Among the important actions of the General Assembly of 1933 was the proposal of a new Constitution for North Carolina to be submitted to the voters of the state in November, 1934. This proposed Constitution, representing the first thoroughgoing revision of our fundamental law since 1868, called for thoroughgoing analysis and discussion by the rank and file of the people.

This analysis and discussion was inaugurated after the adjournment of the General Assembly in the 1933 sessions of The Institute. It was continued in The Executive Council sessions of The Institute in April, 1934. In the 1934 Sessions of The Institute to be held in September it will be discussed in detail before hundreds of officers and citizens representing every section of the state. The officers and citizens in this central meeting will carry the analysis and discussion of the proposed Constitution to all groups of people in every community in North Carolina in a great program of popular governmental education.

The Institute of Government undertakes neither to sponsor nor oppose the new Constitution. It has no axe to grind. Its sole purpose is to present a clear and impartial analysis of the changes proposed, the issues at stake, the considerations urged by advocates and opponents and to stimulate free and open discussion

in free and open forums throughout the state. Advocates and opponents have been freely consulted at all stages of the preparation of this monograph. In its present form it has been submitted to them for criticisms and suggestions. In so far as it fails to give adequate presentation of their respective points of view it falls short of its purpose. New angles and new points of view, which will inevitably develop as public discussion of this great public question proceeds, will be analyzed and presented in subsequent issues of the journal of Popular Government.

ALBERT COATES, *Director*

The Institute of Government.

INTRODUCTION

In 1776 representatives of a sparsely settled area laid the cornerstone of a new commonwealth by providing a simple form of government—an all-powerful General Assembly. In 1835 a growing west compelled the dominant east to make concessions in favor of a more democratic government. In 1868 a constitutional rebirth gave to the State restrictions upon the General Assembly and increases in the power of the electorate. In 1875 a reconstructed state relaxed these restrictions upon the General Assembly. In 1931 the cumulative effect of more than half a century of economic, political and social change called for a new Constitution consistent with the realities of a modern and complex society in an industrial era. In 1933 the Constitutional Commission and the General Assembly completed their consideration of a new constitutional document. This year the people will pass upon the desirability of exchanging the present for the proposed Constitution.

General Purposes of this Monograph

In this monograph The Institute of Government has undertaken:

(a) To call attention to all material differences between the present and the proposed Constitutions;
(b) To analyze the significance of those differences in the light of the conditions suggesting the changes;
(c) To present impartially, within definite space limitations, the main arguments presented both for and against the proposed Constitution, and
(d) To present pertinent quotations upon such topics as have been emphasized, either pro or con, in public print or discussion to date.

Method of Treatment

The voters will cast their ballots "For" or "Against" the proposed Constitution, as a whole. The section-by-section analysis has been resorted to here in the interest of logic, completeness and the reader's convenience, the order of presentation following that of the proposed Constitution. Readers must be alert to the inter-relation of the various sections, bearing in mind that the proposed Constitution is to be judged finally as a unit, as space limitations do not permit all of the incidental relations to other sections to be discussed.

A number of general objections have stated that particular sections of the proposed Constitution are superior to the present Constitution, but that they do not go far enough. These critics

urge that the proposal should be defeated, so that the voters may be given an opportunity later to vote upon a more desirable one. The proponents of the proposed Constitution declare that those who hold this view should accept the proposal, since they may, relying upon awakened public opinion growing out of the present constitutional discussions, with greater ease secure further needed amendments. The editors have made no attempt to discuss provisions which might have been included (their number being infinite), but have confined themselves to provisons in either the present or the proposed Constitutions and to arguments addressed to the comparative merits of these provisions.

General Reasons for a Revised Constitution

Two general reasons indicating the need for constitutional revision have been frequently advanced:

1. The changed conditions and ideas of our people in a semi-industrial age have produced a natural obsolescence in some provisions of the present Constitution, designed as it was for an agricultural state; and
2. The present Constitution, adapted largely from the constitutions of northern states by Reconstruction statesmen, reflected the influence of carpetbag politicians and negroes, and did not always express the will of our then politically-weakened people.

The proposal is not a new Constitution, but a revised, modernized edition of the present Constitution. It is not the work of, nor does it embody all the ideas of, any one man. It is a product of concerted thought. The proponents declare that the work of compromise and adjustment of ideas has been done by the Commission, the joint Senate and House Committee and the General Assembly, and this work should not be rejected because every provision can not be heartily embraced. Judging the work as a whole they stand with U. S. Circuit Judge John J. Parker in saying that it is a great constructive improvement over the present Constitution.

Underlying Changes in the Revised Constitution

What are the underlying changes proposed? These may be listed generally as follows:

1. The revision makes the powers of the General Assembly more flexible, increasing them in some respects with new restrictions and limiting them further in other respects;
2. The revision gives the Governor a veto power which he does not now have and further power, subject to new restrictions, with respect to appointments;
3. The revision unifies our judicial system under the Chief Justice of the

Supreme Court with the rule-making power in a Council of the judges, and makes possible the improvement of our trial court system;

4. The revision eliminates the present constitutional rigidity with respect to certain phases of local government and gives a flexible power, with stated restrictions, to the General Assembly to revamp local government uniformly;
5. The revision eliminates the present confusion regarding the schools, and makes provision for a uniform State-supported public school system.

General Objections to the Revision

Critics of the proposed revision object, in general to

1. The proposed increases in power of the various branches of State government, and
2. The character of the limitations and restrictions upon these proposed increases in power.

These criticisms focus in the view that these proposed increases in central power are at the expense of equivalent withdrawals of power from the electorate. To this the proponents reply that: Flexibility of power is necessary to meet ever-changing conditions, and this power to adjust and alter must be centralized in representative bodies or branches directly answerable to the citizenry in order to attain:

1. Uniformity of governmental structure,
2. Efficiency of administration,
3. Governmental machinery and laws reflecting the best thought and the highest ideals of the people at any given time, and
4. Personal and political responsibility for governmental administration.

Constitutional Theory of the Revision

It has been said that two constitutional theories exist:

1. One type of constitution centralizes governmental power, thereby emphasizing efficiency, energy and unity of administration, is couched in general terms, and has few definite restrictions;
2. The other reposes power in the local communities with a system of checks and balances restraining officials, thereby emphasizing the direct control of government by the people, and is stated not alone in general terms but imposes definite restrictions.

Attorney-General Brummitt, in criticizing the proposal as leaning toward the first type, has said:

> "History has been largely the story of man's struggle to determine whether the few or the many shall control government. Man's progress in building a better social and economic order has been step by step as he attained political democracy. A constitution should provide that form and structure of government which will aid, rather than retard, this effort for control of government by the great mass of the people. We believe that in the long run, and in the final analysis, success of the good cause depends upon control of government by the people themselves. Instead of that,

this proposed Constitution would make it easier to perpetuate government of the people by the machine for the special interests."

Concerning the same subject, U. S. Circuit Judge John J. Parker has remarked:

"The purpose of a state constitution is two-fold: (1) to protect the rights of the individual from encroachment by the state; and (2) to provide a framework of government for the state and its subdivisions. It is not the function of a constitution to deal with temporary conditions, but to lay down general principles of government which must be observed amid changing conditions. It follows, then, that a constitution should not contain elaborate legislative provisions, but should lay down briefly and clearly the fundamental principles upon which the government shall proceed, leaving it to the people's representatives to apply these principles through legislation to conditions as they arise. The Constitutional Commission proceeded upon this principle in drafting the new Constitution . . ."

It will remain a matter of opinion whether the proposed Constitution can be pigeon-holed in either of these two categories.

A study of the proposed Constitution will reveal instances of increased, and of decreased, power in the three major departments:

The Executive

Increased Power:

(a) The veto power, as a check upon the General Assembly;
(b) The power to appoint, with the confirmation of the General Assembly, the State Board of Education which would have wide powers of control over the public school system.

Decreased Power:

(a) The prohibition of appointment of members during their terms in the General Assembly to offices created or made more lucrative by the Assembly;
(b) The requirement that the Governor in the exercise of the general power of appointment secure the advice and consent of the Senators-elect.
(c) The transfer of the power to assign judges to the Chief Justice.

The Legislature

Increased Power:

(a) The complete, rather than the present restricted, power over the offices of coroner, sheriff, constable, Justice of the Peace, and clerk of the Superior Court by general laws;
(b) The power to change the solicitorial system either by (1) creating solicitorial districts which do not coincide with judicial districts, or (2) by adding new duties to the office of solicitor;
(c) The power to permit married women to convey their property without the consent of their husbands;
(d) The power to prescribe the extent to which the State Board of Public Welfare shall supervise all charitable and penal institutions;
(e) The power to refuse confirmation of appointments to the State Board

of Education and of general appointments by the Governor;

(f) The power to provide new methods for charging misdemeanors and to allow convictions of petty misdemeanors other than by unanimous verdicts;

(g) The new flexibility of power of the General Assembly, largely existing heretofore but unexpressed, in providing for public welfare, agriculture and industry;

(h) The increase of legislative discretion with respect to taxes by wiping out present provisions designed to be restrictive and according the legislature a taxing power restricted by more general principles than at present;

(i) The power of the General Assembly to tax the incomes of executive and judicial officers during their terms.

Decreased Power:

(a) The effect of the veto power as a check upon the power of the General Assembly;

(b) The restriction of the general power of the General Assembly over local government to general laws and the prohibition of special or local laws in such matters;

(c) The restriction of the power of the General Assembly over inferior courts to general laws and the prohibition of special or local laws dealing with courts;

(d) The sliding-scale limitations upon state and local debts;

(e) The prohibition against any further extension of absentee voting by the General Assembly;

(f) The prohibition against exempting homesteads from taxation in a sum greater than $1,000.

The Judiciary

Increased Power:

(a) The Judicial Council as giving the judges the rule-making power;

(b) The administrative power of the Chief Justice which would take from the Governor and give to the Chief Justice the power to assign judges to particular terms;

(c) The power of the Supreme Court to sit in divisions rather than *en banc* (except in constitutional questions).

Decreased Power:

(No decrease in power.)

In general there is a constant struggle between the ideas of restriction and flexibility. On the one hand the advocates of constitutional restrictions urge positive restrictions and checks and balances; on the other hand those favoring flexibility insist upon the concentration of power. If severe restrictions are imposed, the people risk (a) the probability of evasions of those restrictions and (b) the hampering and fettering of official repre-

sentatives in the solution of new problems; if extreme flexibility is allowed, the electorate faces always the possibility of abuse of power by the official representatives. As the choice between restriction and flexibility is faced again and again in the particular provisions of the present and the proposed Constitutions, the reader would do well to ponder this question: As between the two, is it more important that the people be protected from their elected representatives, or is it more important that the representatives be left free to deal with unforeseen problems and conditions as they appear?

It is but natural that the proposed Constitution should partake of the characteristics of different schools of thought, since the members of the Commission were drawn from various professions, different sections of the state both agricultural and industrial, and both political parties, and were assisted by the faculties of the law schools of the state. This composite document of the Commission was further amended by the Committees of the Senate and House and the General Assembly itself, before it was approved in its present form, for submission to the voters of North Carolina on November 6, 1934.

The EDITOR.

Raleigh, N. C., June 1, 1934.

AN HISTORICAL NOTE ON THE CONSTITUTION OF NORTH CAROLINA: PAST, PRESENT AND PROPOSED

The present Constitution is the political heritage of yesterday and the constitutional blue-print of tomorrow, the historical conduit through which the governmental wisdom of the past flows into the mould of the organic law of the future. No political document can be divorced from its setting, and no constitution can be intelligently interpreted except in the light of the realities of the present and the forces of the past existing and at work in the society which produces it. Perhaps we do not altogether realize how close 1584 is to 1934, nor to what extent we are debtors to those three and a half intervening centuries.

The State's First Constitutions

North Carolina (as a part of a greater area) in 1584 passed by letters patent from Queen Elizabeth to Sir Walter Raleigh, but after Raleigh's failure at colonization, Charles II in 1663 granted a charter to the Lords Proprietors, who selected one of their number to write for this territory "a perfect constitution." The Proprietor selected was Lord Chancellor Ashley Cooper, Earl of Shaftesbury, and he with his friend, the political philosopher John Locke, prepared "The Fundamental Constitution of Carolina" which the Proprietors signed July 21, 1669, but seem never to have put into effect. In the fall of the same year at Albemarle the Legislature, ignoring the idealistic document of Locke and Shaftesbury, passed a few laws which the Proprietors confirmed and which, re-enacted in 1715, were in effect for more than half a century. In 1729 the Proprietors gave way to the Crown, and Crown Governors with an elected Assembly administered the state government, amid restlessness and rebellion, for almost half a century.

On April 13, 1776, a provincial Congress at Halifax, having instructed delegates to the Continental Congress, appointed a Committee to prepare a temporary Constitution. The majority of this Committee favored a pure democracy with universal freeman suffrage, while a minority wanted a representative republic closely modeled after England. On December 17, 1776, the Bill of Rights was passed; it stands today, relatively unchanged, little appreciated as the organic safeguard of individual liberty upon which our state government was raised. On December 18, 1776, the

Constitution was adopted and went into effect without a vote of the people by proclamation. The governmental structure was simple, the Constitution providing for an elected Legislature with authority to choose state officers and judges.

The Constitution of 1835

In 1834 a growing and progressive West was challenging the less populous, but still dominant, East, when Governor Swain urged upon the General Assembly the need of a revised Constitution to assist public improvements and halt the flow of people and wealth out of the state. On January 5, 1835, the Legislature submitted the question of a convention to the people, which later passed 27,550 to 21,695 and on June 4, 1835, the delegates assembled in the Presbyterian Church at Raleigh, the Capitol having burned June 21, 1831.

The Convention made the following changes:

(a) The county basis of representation for the House of Commons gave way to representation based upon the Federal census with all free persons included, but Indians not taxed were not to be counted and only three-fifths of all other persons. Of the 120 members of the House, each county should have at least one; the Senate to have 50 members, the districts to be formed on the basis of the assessed value of property for taxation.
(b) The Governor was to be popularly elected for two years.
(c) Free negroes who had previously voted were excluded from that privilege. Borough representation was abolished.
(d) The capitation tax was made equal.
(e) "Christian" was substituted for "Protestant" in listing the qualifications of officeholders.
(f) Provision was made for calling a convention and for amending the Constitution.
(g) A few minor amendments were made.

The Constitution was ratified, 26,771 to 21,606, the central and west portion of the state voting for, and the east against, it. With the new Constitution came a policy of internal improvements, the active participation of the state in public service enterprises, and new interest in public education. A frugal and hard-working citizenship were giving North Carolina what appeared to be a permanent era of prosperity when the storm clouds of war broke upon a prospering, busy and contented people.

The War Between the States

On May 15, 1861, at Raleigh a convention of 115 delegates unanimously abrogated the adoption and ratification (Nov. 21,

1789) of the Federal Constitution. After the war President Johnson (May 29, 1865) proclaimed W. W. Holden provisional Governor and directed a convention, composed only of the loyal supporters of the United States, for altering and amending the Constitution. The convention met October 2, 1865, repealed the Secession Ordinance and unanimously adopted an ordinance prohibiting slavery. Soon after the election of 1865 (the Senators and Congressmen chosen were not allowed to take their seats in Congress), the state government was subordinated to military rule, with Federal bayonets and negro ballots much in evidence.

General E. R. S. Canby, U. S. A., called a convention and an election was held under officers appointed by him; the returns were made to him and he declared the delegates elected. The delegates assembled at Raleigh, January 14, 1868—13 Conservative and 107 Republican delegates (of the latter at least 18 were carpetbaggers and 15 negroes). Calvin J. Cowles, Governor Holden's son-in-law, presided; carpetbaggers secured the chairmanships of ten of the nineteen standing committees and controlled the convention, only deadlocks and rivalries of the three carpetbag leaders enabling the native whites to retain unchanged a large portion of the fundamental law.

The Present Constitution

The Constitution of 1868, which came out of the convention, was modeled after the Ohio and Pennsylvania Constitutions, and contained many innovations:

(a) The Bill of Rights was largely preserved, adding prohibitions of slavery and a denial of the right of secession, and prohibiting imprisonment for debt except in cases of fraud, with a few other minor changes. The Preamble was re-written to express joy and exultation in the recent defeat of the southern cause, and the language of the Tenth Amendment to the Federal Constitution was employed in section 37, incorrectly and confusingly referring to the powers "not herein delegated" as remaining in the people. (See discussion "The Residuary Power of the General Assembly.")

(b) Property qualifications for members of the Legislature were abolished; an age minimum (30 years) was fixed for Senators. The House of Commons was re-named House of Representatives. An oath of allegiance was required of members of the Legislature.

(c) The Governor's term was fixed at four years and the office of Lieutenant-Governor, the occupant to preside over the Senate, was established.

(d) The judicial department was changed substantially. Distinctions between actions at law and suits in equity were abolished. The number of Supreme Court justices was increased from three to five and

of Superior Court judges from eight to twelve, and their election (with that of solicitors) taken from the General Assembly and given to the people. The terms of judicial officers were changed from life or good behavior, to eight years. The election of clerks of the Superior Court, sheriffs and coroners was taken from the county courts and given to the people.

(e) The machinery of state and local government was provided in detail with many regulations and restrictions where formerly the General Assembly had a free hand. The unlimited power to tax, to exempt from taxes, to pledge the state's credit, to control the other state departments and to legislate generally was curtailed by specific and general restrictions. The real separation of the executive, legislative and judicial departments came as part and parcel of this determination to enclose the General Assembly within a constitutional pasture rather than to allow it to graze at will over the legislative range.

(f) Other less important changes were made.

The Constitution of 1868 brought elaborateness, and, to some extent, confusion, where the Constitution of 1776 (even as amended in 1835) had been simple.

The election was held under military orders, April 24, 1868, and the poll reported was 93,118 "For" and 74,009 (almost a solid front of white voters) "Against" the new Constitution. Many white voters had been disfranchised. Congress approved the Constitution. In the election of 1868 under the leadership of Holden the Republicans gained control of the General Assembly and every seat in Congress except one; this Legislature ratified the Fourteenth Amendment and the state's senators and representatives were seated in Congress July 20, 1868.

The Period of Reconstruction

Scarcely had the new restrictions and limitations become operative before the General Assembly of 1868-1869 (containing more than twenty negro, and more than thirty carpetbag, members) issued millions of dollars worth of bonds, many of which now stand repudiated by the Constitution. After the impeachment of Governor Holden, the election of 1870 turned the tide against what has been termed "foreign misrule," but the ballot for a constitutional convention was unsuccessful. In 1873 eight amendments were passed, relating, among other things, to:

(a) The abolition of the office of superintendent of public works;

(b) The inviolability of the state debt and taxation generally;

(c) The prohibition of dual office-holding;

(d) The requirement of biennial instead of annual sessions of the General Assembly;

(e) The provision for the election of trustees of the University and for the maintenance and management of the institution.

The call for a convention from the session of 1874-1875 was successful, and the delegates met at Raleigh, September 6, 1875 to consider the amendment of certain specified articles of the Constitution.

The Convention of 1875

This Convention of 1875 was almost evenly divided between the Republicans and the Conservatives (Democrats). An Independent, a former Republican, was elected president. The sessions of the Convention lasted thirty-one days, adjourning October 11, 1875. The following changes were made:

(a) The number of justices of the Supreme Court were reduced from five to three and the number of judges of the Superior Court from twelve to nine. (The number of justices and judges was later increased, the justices by constitutional amendment and the judges by statute.) The jurisdiction of the Supreme Court was slightly enlarged. The General Assembly was given authority to distribute the judicial power (below the Supreme Court) among lesser courts existing or to be established. Provision was made for a two-thirds vote of the General Assembly to remove judges for mental or physical inability.

(b) The power of the General Assembly with respect to local government structure and election of Justices of the Peace was enlarged in particular instances.

(c) Biennial sessions of the General Assembly were restored and the compensation of members fixed at $4.00 a day for not exceeding sixty days (for special sessions not to exceed twenty days).

(d) In the Bill of Rights the right to bear arms was amended to allow enactments regarding carrying concealed weapons and the right of the people to assemble was limited by a prohibition of secret, political societies.

(e) Separate schools for white and colored were required to be provided without discrimination, and the inter-marriage of white and colored persons was prohibited.

(f) Authority was given for the employment of convict labor, on highways and public works.

(g) A detailed method of amending the Constitution was provided.

It is probable that the almost even division of membership prevented the changes from being more extensive. These amendments were ratified in the 1876 election. A few other amendments were made during the next three decades:

(a) The special-tax "carpetbag bonds" were repudiated by the amendment of 1879.

(b) The number of justices of the Supreme Court was increased again to five in 1889.

(c) The Republican-Populist fusion brought to an issue the suffrage ques-

tion which found solution in the "Grandfather Clause" amendment of 1900 adopted (with the aid of many Republican voters) by a vote of 182,217 to 128,285.

These concluded an era of amendments, and for a number of years no further amendments were submitted.

Recent Amendments

During the period from 1913 to 1933, inclusive, amendments involving forty-one changes were submitted to the people, according to the biennial North Carolina Manual, but some of these were re-submissions of previously unsuccessful proposals. Of these forty-one proposed changes in sections, eighteen sections were actually amended, as follows:

Article	Section	Year	The Amendment
II	new	1916	Restricting local, private, and special legislation.
IV	11	1916	Providing for emergency judges.
VIII	1	1916	Prohibiting special charters to corporations by the General Assembly.
VIII	4	1916	Prohibiting special charters to towns, cities, and incorporated villages.
V	3	1918	Exemption from taxation of Homestead notes.
IX	3	1918	Requiring a six months school term.
V	1,3,4,6,	1920	Limiting rate of state and county taxes, including poll; authorizing tax on net incomes.
VI	2,4	1922	Residence requirements for voting reduced to one year in the state, four months in the county, and abolition of the payment of poll tax as prerequisite to voting.
II	30	1924	Prohibiting use of sinking funds for other purposes.
V	3	1924	Allowing limited exemption of homesteads, notes and mortgages from taxation.
V	4	1924	Limiting state debt to 7½% of assessed valuation of taxable property.
III	3	1926	Relating to election returns for executive officers.
II	28	1928	Increasing pay of members of General Assembly.
X	7	1932	Protecting insurance for widows and children against claims of insured's creditors.

It is interesting to note that the amendment to increase the pay of members of the General Assembly was voted upon four times before being changed, the amendment to allow solicitorial districts separate from judicial districts has been defeated three times and four other amendments (to restrict local, private and special legislation; to provide additional judges; to prevent special charters to corporations; to prevent special charters to cities, towns and incorporated villages.) were passed on the second sub-

mission to a vote. An amendment to allow classification of property for taxation has been twice defeated. Popular votes have defeated amendments to substitute the words "War Between the States" for "Insurrection or rebellion against the United States" and to strike out sections, now long obsolete, dealing with cases and terms of office in existence when the Constitution was adopted.

The Proposed Constitution

A Constitutional Commission in 1913 drafted ten amendments, submitted in 1914; all were defeated by majorities of from 2,000 to 18,000 votes. Four of these were later carried by two-to-one votes in 1916, and a fifth one adopted by a six-to-one vote in 1918. In 1917 the General Assembly called for a vote on a constitutional convention in 1918, but as a result of the World War both political parties in 1918 agreed to leave the subject off the ballots.

In 1931 the General Assembly provided for the appointment of a Constitutional Commission of nine members to be appointed by the Governor to study the entire Constitution and report its findings and recommendations to the 1933 General Assembly. Governor O. Max Gardner on June 24, 1931 notified the following men of appointment to this Commission: W. P. Stacy, Chief Justice of the Supreme Court, Raleigh, N. C.; John J. Parker, Judge of the U. S. Circuit Court of Appeals, Charlotte, N. C.; Michael Schenck, Judge of the Superior Court, Hendersonville, N. C.; Lindsay C. Warren, Member of Congress, Washington, N. C.; Burton Craige, Attorney, Winston-Salem, N. C.; A. J. Maxwell, Commissioner of Revenue, Raleigh, N. C.; Major George E. Butler, Attorney, Clinton, N. C.; Dr. Clarence Poe, Editor of *The Progressive Farmer* and *Southern Ruralist*, and J. O. Carr, Attorney, Wilmington, N. C., in an endeavor to "recognize all sections of the state, every school of thought, and the various shades of economic, social and political opinion." Beginning October 7, 1931, the Commission held frequent meetings, calling freely upon the faculties of the state's three outstanding college and university law schools for studies of particular problems. On November 26, 1932, the Report of the Commission was made to the Governor, who on the same day transmitted it to the members-elect of the 1933 General Assembly as the "most thorough-going and constructive revision of the Constitution ever produced in the history of North Carolina." After submitting the recommended

Constitution to amendments both in joint committee session and on the floors, the General Assembly ratified it, substantially as proposed, May 8, 1933, and it will be submitted to the people at the general election November 6, 1934.

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Art. I. The Bill of Rights

CHARGES OF CRIME AND TRIAL BY JURY

Present Constitution

ART. I. SEC. 12. ANSWERS TO CRIMINAL CHARGES. *No person shall be put to answer any criminal charge except as hereinafter allowed, but by indictment, presentment, or impeachment.*

SEC. 13. RIGHT OF JURY. *No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The Legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal.*

Proposed Constitution

ART. I. SEC. 9. CHARGES OF CRIME. *No person shall be put to answer any felony, but by indictment by a grand jury. For offenses less than felonies the General Assembly may provide otherwise than by indictment for the prosecution of crimes.*

SEC. 10. RIGHT OF JURY. *No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The General Assembly may, however, provide other means of trial for petty misdemeanors, with the right of appeal.*

THE CHANGES

1. At present criminal charges must be brought by indictment, presentment or impeachment. (Pres. s. 12) The Commission proposed that indictments be required only in capital felonies (burglary, murder, rape and arson), but objections to this were raised before the Committee so that the proposal of the General Assembly would require indictments for all felonies and would allow the General Assembly to provide other means of charging crime in all misdemeanors. (Prop. s. 9)

2. Unanimous jury verdicts are now necessary to convict of any crime. (Pres. s. 13) The Commission proposed that unanimous jury verdicts be required only in capital felonies, but the Committee raised an objection to this and in the General Assembly this was changed to require unanimous verdicts to convict of any crime except petty misdemeanors, for which the Assembly would be allowed to provide other means of trial with the right of appeal. (Prop. s. 10)

THE PROBLEM

To what extent should the General Assembly be empowered to alter the methods of charging crimes and the manner of trying alleged criminals?

The Present Law

1. Impeachment applies only to the removal of public officials from office.

2. All charges of crime in the Superior Court must be by indictment, or presentment, of the grand jury. (Charges of crime in courts below the Superior Court are by warrant, with the right of appeal always to the Superior Court where an indictment or presentment is necessary in charging a crime, except in cases of appeal from an actual trial in a lower court).
3. All jury verdicts in the Superior Court must be unanimous. (In courts below the Superior Court juries are rarely demanded, but if juries are employed, their verdicts must also be unanimous. In these courts the General Assembly has power, and has often exercised the power, to provide for juries of less than twelve men).

Conditions Suggesting a Revision

1. Grand juries, which must pass upon all petty as well as serious charges of crime, except in appeals, are expensive:
   (a) Grand juries, usually composed of eighteen men, must be paid for the time they are in attendance.
   (b) The judge, solicitor, petit jurors and witnesses, all of whom must be paid for their time, often must wait, especially in the early part of terms, for "bills to be returned by the grand jury."
2. Petit, or trial, juries also must be paid by the counties:
   (a) "Hung juries" draw fees for the time they are in disagreement.
   (b) When both trial juries are "out of the box" considering their verdicts, often the judge, solicitor and witnesses "wait for a regular jury" rather than select *tales* jurors, as being less expensive than selecting *tales* jurors to be paid, also, by the county.
   (c) Petty recidivists, or "repeaters," often demand jury trials as pure gambles that the State will not be able to convince all twelve of the jurors of the defendant's guilt; this is a county expense which the accused can always invoke.

Essentials of the Proposal

1. Indictments would be necessary only for felonies, with a less elaborate method of charging minor offenses.
2. Unanimous verdicts would be required in all serious offenses, but this restriction would not apply to methods of trying petty misdemeanors.

Criticism of the Proposal

The proposals would remove, in minor offenses, other than in appeals, the constitutional safeguards (a) of a "true bill" of a grand jury as a prerequisite to trial in the Superior Court and (b) of a unanimous jury verdict as an essential to conviction for crime. These safeguards have been defended as protecting innocent persons from persecutions by enemies and, by requiring unanimity of twelve jurors, assuring the protection of proof beyond a reasonable doubt.

Advantages of the Proposal

1. The unwieldy, expensive grand jury would be used only for serious offenses. Economy and efficiency would be increased:
   (a) Minor offenses could be tried in the Superior Court when the court would otherwise be "waiting for bills";
   (b) A speedier, more economical method than now used could be used in charging misdemeanors.

2. The time and expense lost in employing juries in petty misdemeanors could be (a) reduced, by allowing some form of majority verdict, or (b) eliminated, by allowing the facts to be found by the judge. Majority verdicts and the finding of facts by the judge have both been defended as an aid in making more certain the conviction of criminals.

The Residuary Power of the General Assembly

Present Constitution

ART. I. SEC. 37. OTHER RIGHTS OF THE PEOPLE. *This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.*

Proposed Constitution

ART. I. SEC. 34. OTHER RIGHTS OF THE PEOPLE. *This enumeration of rights shall not be construed to limit or restrict other rights of the people not mentioned in this Article.*

THE PROBLEM

Does the General Assembly have only those powers granted by the Constitution, or all powers except those witheld by the Constitution?

The Present Law

The question has often arisen whether the General Assembly has only powers granted by the Constitution (like Congress) or whether it has absolute power to act unless restrained by the Constitution? The following fact situations have required the Supreme Court to answer this question:

1. The General Assembly attempted to appoint a state officer.
2. The General Assembly attempted to appoint to an office not established by the Constitution, but by the General Assembly.
3. The General Assembly attempted to regulate fishing in the island waters of the state and along the coast.
4. The General Assembly attempted to regulate the transportation of liquor into a particular county.

If the General Assembly has only granted powers it can not appoint officers, regulate coastal fishing or the transportation of liquor into counties, but if the Assembly has all powers except those witheld, it can do each of these things.

In 1873 the Supreme Court declared that the General Assembly was restricted to its granted powers. (*Nichols v. McKee*, 68 N. C. 429) In 1905 a divided Court held that the action of the General Assembly is absolute unless it is forbidden by the Constitution; in 1906 three of the justices refused to adopt this view; in 1908 the majority of the Court declared that unless a power is conferred by the Constitution upon the Legislature, it does not exist, the view of 1873. (*Daniels v. Homer*, 139 N. C. 219; *State*

v. Lewis, 142 N. C. 626; *State v. Williams*, 146 N. C. 618) In 1928 the late Justice Adams speaking for the Court in upholding the power of condemnation stated:

"The State Constitution is not a grant but a restriction of powers."

Under this recent holding the General Assembly has all powers except those witheld by the Constitution. Chief Justice Stacy presented this as the law in addressing the joint Committee on Constitutional Amendments (1933), when he stated:

"Legislative authority of the General Assembly is full and complete except when limited."

Conditions Suggesting the Revision

1. Chief Justice Stacy has remarked:

   "The word 'delegated' is not exact. It would be correct in the United States Constitution, but not in the State Constitution . . . In North Carolina, however, the question is not whether the Legislature has been 'granted,' but 'witheld' the power."

2. Although the law now appears finally settled that the General Assembly has all powers except those witheld from it by the Constitution, the Supreme Court could, at any time it cared to do so, rely upon the opposing cases to declare that the General Assembly has only granted powers.

Essentials of the Proposal

"This enumeration of rights shall not be construed to limit or restrict other rights of the people not mentioned." This proposal would write into the Constitution a clear statement of what is now accepted as the power of the General Assembly; i.e. the General Assembly has full and complete power to act unless the Constitution witholds that power from the General Assembly.

Art. II. The Legislative Department

REGULATION FOR DISTRICTING THE STATE FOR SENATORS

Present Constitution

ART. II. SEC. 4. REGULATIONS IN RELATION TO DISTRICTING THE STATE FOR SENATORS. *The Senate Districts shall be so altered by the General Assembly, at the first session after the return of every enumeration by order of Congress, that each Senate District shall contain, as near as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return or another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate District, unless such county shall be equitably entitled to two or more Senators.*

Proposed Constitution

ART. II. SEC. 3. REGULATION FOR DISTRICTING THE STATE FOR SENATORS. *The Senatorial Districts shall be so altered by the General Assembly at the first session after the return of every enumeration of the Census by order of Congress, that each Senatorial District shall contain, as nearly as practicable, an equal number of inhabitants, excluding aliens, and shall remain unaltered until the return of another enumeration by order of Congress, and shall at all times consist of contiguous territory; but no county shall be entitled to more than one Senator.*

THE CHANGE

The present and proposed sections are the same except:

(a) Indians not taxed are not now counted in determining the population for alloting Senatorial Districts, but they would be counted under the proposed provision, and

(b) Counties can now be divided in forming Senate Districts when the county is entitled to two or more Senators, but under the proposal the necessity for dividing a county would be eliminated by limiting each county to a maximum of one Senator.

DISCUSSION

Counting Indians in Determining Districts

The present discrimination against the Indians would be removed by the proposal, and these few "vanishing Americans" still remaining would be counted in dividing the state for the election of Senators.

Restricting Counties to a Maximum of One Senator

The Present Law

After each Federal census the state is supposed to be divided, upon the basis of population, into fifty equal districts, one Senator to be elected from each district. If a county is thickly popu-

lated, it may be entitled to two or more Senators, and when such is the case the county would be divided into two or more Senatorial districts, as the case may be.

The Proposal

Under the proposal the fifty Senators would be distributed upon the basis of population, but no county, however populous, would be allowed to receive more than one Senator. Counties having more than one-fiftieth of the population of the State would each be made a district and allotted one Senator; the remaining Senators would then be distributed by districts on the basis of population to the remaining area of the State.

At present Senatorial representation shifts with the population; a thickly-populated county may have several Senators while it may require several thinly-populated, rural counties to form a single Senate District. The proposal would curb a possible future concentration of Senators in the urban centers, with its resultant tendency toward urban domination of the Senate. The majority of the membership of both the House and the Senate now tends increasingly to come from the populous centers, the rural populace being increasingly outvoted in the election of members of the General Assembly. The proposed Constitution would not disturb this tendency with respect to the House, but by limiting a county to a single Senator would check the tendency toward a rapid urbanization of the Senate at the expense of the rural communities.

To date no criticism of this proposal appears to have been voiced.

THE GOVERNOR'S VETO

Present Constitution

(No Equivalent Provision in Present Constitution)

Proposed Constitution

SEC. 21. VETO POWER OF GOVERNOR. *Every bill and every resolution of a legislative nature which shall pass the Senate, and House of Representatives shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it; but, if not, he shall return it with his objections to the House in which it originated, which shall enter the objections at large on its Journal, and proceed to reconsider it. If, after such reconsideration, a majority of the entire membership of that House shall agree to pass the bill or resolution, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the entire membership of that House it*

shall become a law. If the Governor approve the general purpose of any bill or resolution, but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the House in which it originated; whereupon the same proceeding shall be had in both Houses upon the bill or resolution and his recommendations in relation to its amendment as is hereinbefore provided in relation to a bill or resolution which he shall have returned without his approval, and with his objections thereto: PROVIDED, *that if after such reconsideration, both Houses by a vote of a majority of the members present in each shall agree to amend the bill or resolution, in accordance with his recommendation in relation thereto, or either House by such vote shall fail or refuse so to amend it, then, and in either case it shall again be sent to him, and he may act upon it as if it were then before him for the first time. But in all the cases above set forth the vote of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill or resolution shall be entered on the Journal of each House. If any bill or resolution shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it. The Governor may approve, sign and file in the office of the Secretary of State, within ten days after the adjournment of the General Assembly, any bill or resolution passed during the last five days of the session and it shall become a law; but he shall not have power to veto a bill or resolution after adjournment if presented to him forty-eight hours before adjournment, and if not so presented he may veto such bill or resolution within ten days after adjournment and file it in the office of the Secretary of State. Any bill or resolution passed during the last five days of the session, which is neither approved nor vetoed by the Governor within ten days after adjournment as herein provided, shall become a law in like manner as if he had signed it. The Governor shall not have power to veto any bill or resolution which is to be submitted to a vote of the people for adoption.*

THE PROBLEM

Should the Governor be given power to veto legislation, and if so, is the proposed veto power an appropriate one?

The Present Law

At present the Governor does not have the veto power in any form.

Conditions Suggesting the Veto Proposal

1. Each of the other forty-seven states has given the Governor the veto power, and no one of these has taken this power from the Governor.
2. Any action of our General Assembly is now absolute unless unconstitutional.
3. The trend of recent Legislatures has been toward an increase in the potential power of the Governor; the grant of the veto power would be a continuance of this tendency, indicated in part by the following:
   (a) Since 1925, under the Budget Act, he has been empowered to adjust appropriations to meet revenues, (C.S., c. 126);
   (b) Since 1931, under the Local Government Act, he has been able to exercise an extensive financial control over local units, through the

Local Government Commission, a majority of the members being appointed by the Governor. (C.S., c. 49B.),

(c) Since 1933, under the State Highway and Prison Merger Act, he has had power to direct, largely, the prison and highway systems of the state through the Highway and Public Works Commission, all seven members of which he appoints. (Pub. Laws, 1933, c. 172);

(d) Since 1933, under the School Machinery Act, he has been able to influence strongly the administration of the public school system, the major administrative body of which is the School Commission. The Governor and the Lieutenant Governor are members and eleven of the remaining thirteen members are named by the Governor. (Pub. Laws, 1933, c. 562).

Essentials of the Proposed Veto

The following are the principal elements of the proposed veto:

1. It applies only to measures which now become effective as laws upon passage by the two Houses.

   [*The veto is not applicable, as construed in other states, to measures (a) dealing with legislative procedure, or (b) to be voted upon by the people.*]

   It requires the Governor to list his objections if he opposes the bill, or to suggest amendments, if he approves the general purpose of the bill but not all provisions of it. In the latter case a majority of those present in both Houses may accept or reject the suggestions, whereupon the Governor may still exercise his veto.

   [*Three states empower the Governor to propose amendments to measures objectionable in part.*]

   A majority of the membership of each House (61 in the House and 26 in the Senate) is necessary to override the veto.

   [*The other forty-seven states fall into six classes with respect to the number of votes in the General Assembly necessary to override a veto:*

   1. Two-thirds of the membership—22 states;
   2. Two-thirds of those voting—12 states;
   3. Three-fifths of the membership—4 states;
   4. Three-fifths of those voting—1 state;
   5. Majority of the membership (proposal for N.C.)—7 states;
   6. Majority of those voting—1 state.

   In 33 states the number to override a veto is constant (N.C. would be added to this group); in 14 states the number necessary varies with the number of members present. Numerically, it is more difficult to override the veto in 26 states than it would be in this state, is equally difficult in 7 states, less difficult in 1 state, and subject to variations in 13 states.]

2. If the bill is presented to the Governor more than five days before adjournment, he has five days in which to veto it;
   If it is presented within five days but more than forty-eight hours before adjournment, he may veto it at any time before adjournment, and not afterwards;

If it is presented to him within forty-eight hours before adjournment or after adjournment, he may veto it within ten days after adjournment;
If it is presented within five days before adjournment or later, he may approve, sign and file the measure within ten days after adjournment.

[*Twenty-two states allow the Governor five days in which to exercise the veto; eleven allow a shorter, and fourteen a longer, period. Bills presented after adjournment, in other states, may be vetoed during varying periods of from three to thirty days. In twenty-three states the Governor may approve bills after adjournment during specified periods of from five to thirty days.*]

3. If the Governor fails to veto a measure within the prescribed periods, it automatically becomes law; thus the "pocket veto" is eliminated.

[*In the Federal government and some states, when the veto period expires without express approval, it is automatically vetoed; other states expressly provide that the lapse of the period without action by the Governor automatically makes the measure law.*]

No "item veto," is incorporated; the item veto can be most closely approximated by suggested amendments of specific items during sessions.

[*The "item veto," generally limited to appropriation measures, is allowed in thirty-seven states, thus enabling the Governor to limit the effect of the veto to the distasteful portions of such bills. In North Carolina when appropriation bills are passed in the closing days of the session, under the proposal, if the Governor received such a measure more than forty-eight hours before adjournment, he could (a) veto it before adjournment or (b) accept it; but, if he received it during the last forty-eight hours or later, he could (a) veto it within ten days after adjournment and call a special session to make new appropriations or (b) accept it. In any case, he could later resort to his statutory powers as Director of the Budget to carve the appropriations to meet available revenues.*]

All votes provided for must be roll call votes, and the "yea" or "nay" of each member voting must be preserved in the Journals.

Criticism of the Veto

Those opposing the veto declare that:

(1) It would empower the executive to influence, and interfere with, the legislative department, the properly authorized legislative authority;
(2) It would violate the doctrine of legislative supremacy and centralize more power in the hands of the executive, beyond the reach of legislative control.

Suggested Advantages of the Veto

Those favoring the veto insist that:

(1) It will give the Governor greater power, and place upon him greater responsibility, for shaping and directing the legislative policies of the administration, and enable the Executive, who lives constantly with the state's problems, to bring the wisdom of his experience to bear upon pending enactments, an especially valuable contribution during the last years of his term;
(2) It will enable the Governor to check immediately much hasty, ill-con-

sidered, ambiguous, undesirable and unconstitutional legislation, and will make it possible for him to prevent immediately some measures infringing upon the constitutional powers of judicial and executive departments, which now must be checked months later by test cases;

(3) It would be a check upon the extensive powers of the General Assembly, especially such powers as those dealing with taxation and local government which are increased by the proposed Constitution.

Quotations from Opponents and Proponents of the Veto

"The proposed new Constitution contains what is seductively called a 'modified form of the veto power.' Under the Federal Constitution, a two-thirds vote of a quorum of the Senate and House is required to pass a bill over the President's veto. But under the so-called 'modified form' in the proposed Constitution, it would require a majority vote of the entire membership of each house of the General Assembly to pass a bill here over executive objections. Under the usual form, such as that in the Federal Constitution, a bill could be passed over the vote of the Governor here by a minimum vote of eighteen in the Senate and forty-one in the House. Under the plan in the proposed new Constitution, a minimum vote of twenty-six in the Senate and sixty-one in the House would be required to pass a bill over such veto.

"In practice it would be almost an impossibility to pass an important measure over the Governor's veto. We might as well confer legislative power on him directly and be done with it. The legislative session of 1931 ran nearly five months. That of 1933 about four and one-half months. Many important measures, including revenue and school bills, did not come to the floor of either branch until long after the usual time of adjournment of preceding General Assemblies. The School Machinery Act came from the committee to the Senate in 1933 only a few days before adjournment."

—Attorney-General Dennis G. Brummitt.

"The principal of separation of judicial, executive and legislative powers seems to be wise. To give the Governor in legislative matters the power to nullify a program supported by 65% of the Senators and Representatives chosen to make the laws of the State, I believe is getting too far away from the sound principle of 'trusting the common sense of the most.'

"On the other hand, I do believe that the Governor should have the power to sound a general alarm whenever he believes the Legislature has passed any dangerous or unwise legislation; to require the Legislature (and the people through the press) to hear his warning, and then to compel every legislator again to go on record in the matter with the full knowledge that the eyes of the State are upon each legislator as he votes. But if a majority of the members of each house, having considered the Governor's reasoning and the prestige of his office, still feel that the proposed measure is for the best interests of the people, then I believe the wisdom of the majority should be allowed to prevail.

"With such a veto power, the Governor could turn the powerful searchlight of state-wide publicity upon any measure that he believes should not have been passed and thus render many an invaluable service to our people. A bill that had been adopted with little discussion and without a roll call would be subjected to both these acid tests. The eyes of all his constituents would be upon each Senator or Representative as he elected to approve or reject the Governor's widely-heralded objections. But a clear majority of the elected law makers of the state would still possess the

right to make the laws of North Carolina, as I believe they should do." —Dr. Clarence Poe, of the Commission.

"Actually, therefore, as to bills enacted in the end-of-the-session rush, the executive veto, in Congress and in nearly all of the states, is absolute for lack of a legislature in session to re-enact rejected measures. The limitation under discussion [*denial of power to veto bills presented 48 hours before adjournment*] was probably inserted by the Constitutional Commission to minimize the Governor's exercise of such an absolute veto. Even if that result is desirable, it is doubtful whether 48 hours is an adequate time within which a governor may discharge his responsibility. He may desire to secure advice from the Attorney-General, to consult department and institutional executives, to hold public hearings and otherwise to prepare himself for his decision. The Governor is given such a short period of time as this in no other Constitution. California, New York and Pennsylvania give him 30 days. . . .

"There need be no serious fear, however, of the prospect of a majority of the entire membership overriding a gubernatorial veto. With the legislators elected every two years and a Governor unable to succeed himself, the General Assembly and the governor are directly accountable to public opinion for their acts. The North Carolina governorship has increased enormously in authority and in prestige. Against the effects upon public opinion of a Governor's veto mesage, publicized through the press and the radio, it will be a desperate opposition which can muster 61 votes in the House and 26 in the Senate. And if it can, that decision ought to prevail if representative government is to continue."
—Dean M. T. Van Hecke, in "A New Constitution for North Caroline," *N. C. Law Review*, April 1934.

Editor's Note:

An examination of the Senate and House Journals for the last five days of the sessions (109th to 113th inclusive) of 1931 and (117th to 121st inclusive) of 1933, reveals the following information:

House	1931	Measure	1933	Measure
Largest no. voting	97	(School Machinery)	113	(Revenue)
Smallest no. voting	65	(Two local)	61	(A local, a chainstore)
Av. no. per bill voting	80		83	
Votes on state-wide measures	88, 97, 88		76, 106, 113 103, 67, 112	
Senate	**1931**	**Measure**	**1933**	**Measure**
Largest no. voting	47	(Revenue)	48	(Revenue)
Smallest no. voting	31	(Four local)	31	(One local)
Av. no. per bill voting	38		39	
Votes on state-wide measures	45, 43, 47, 37, 41, 41, 36, 37.		37, 37, 41, 40, 47, 40, 43, 39, 33, 38, 38, 48, 39, 38, 46, 44.	

Using the average of the figures for the two years 1931 and 1933 covering the last five days voting for both sessions as shown above, we may make a comparison of the voting requirements under the two veto plans, to-wit, (1) The Federal veto, requiring two-thirds of those present in each house to override a veto (the original Commission proposal), and (2) the present

proposal for North Carolina, requiring a majority of the membership of each House to override a veto (Dr. Clarence Poe, of the Commission, recommended this as an alternative form and the General Assembly incorporated this recommendation in the veto proposal). It will be noted that the present proposal fixes the number which must vote to override a veto, but the original proposal merely set a standard for determining the number and would therefore allow the number necessary to vary according to the number present and voting.

	Ave. ('31-'33) Largest present	No. necessary to override a veto Under "two-thirds rule."	Under "majority rule."
House	105	70	61
Senate	47	31	26
	Ave. ('31-'33) Smallest present		
House	63	42	61
Senate	31	21	26
	Ave. ('31-'33) of the Ave. voting per bill		
House	81	54	61
Senate	38	25	26

To generalize from these figures, it will be observed that when a high percentage of the membership of the Houses is present, it would be numerically more difficult to override a veto under the Commission proposal than under the present proposal; when the "average" number are present, it would be, numerically, slightly more difficult to override a veto under the present proposal than under the Commission proposal; when a relatively small percentage of the membership of the Houses is present it would be more difficult to override a veto under the present proposal than under the original Commission proposal. However, it must be borne in mind that in both 1931 and 1933 the Governor did not possess the veto power in any form, and, consequently, these figures do not reflect the possible effect of the existence of the veto upon increased attendance in the Houses of the General Assembly.

PROHIBITING APPOINTMENT OF A MEMBER OF THE GENERAL ASSEMBLY TO AN OFFICE CREATED BY IT

Present Constitution

(No Equivalent Provision in Present Constitution)

Proposed Constitution

ART. II, SEC. 22. APPOINTMENT TO OFFICE DURING TERM. *No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the State of North Caroline which shall have been created or the emoluments whereof shall have been increased during such time.*

THE PROBLEM

Should members of the General Assembly be prohibited from accepting appointment to an office created or made more attrac-

tive by the Assembly during the time for which the member is elected?

The Present Law

At present no such prohibition exists.

Conditions Suggesting the Prohibition

1. At present executive appointment to such offices may be in the nature of patronage or rewards for legislative support;
2. There is no present prohibition of agreements between members of the executive and legislative branches as to appointments conditioned upon the enactment of, or defeat of, certain measures.

Essentials of the Proposed Prohibition

It would embody an express prohibition of any person accepting an office during his term, if that person was a member of the General Assembly creating it or increasing its compensation.

Criticism of the Prohibition

No serious criticism has been suggested, but it has been noted that all members—irrespective of marked ability and qualifications—would be eliminated automatically from appointments and this might tend to discourage able men from giving their services to the state in the General Assembly.

Suggested Advantages of the Prohibition

1. The prohibition would render impossible any attempt to barter official appointments to new offices in exchange for legislative support:
2. The prohibition would discourage the legislative creation of offices motivated largely by legislator's hopes of personal advancement.

Quotations from Opponents and Proponents of the Proposed Constitution

"The use of patronage to control legislation is an evil thing—wholly, undeniably evil. It debases and degrades the public service. It places appointments on the lowest possible basis. Art. II, s. 22 of the proposed new Constitution is about the best thing in it. It follows the Federal Constitution in prohibiting appointment of a member of the legislative body during the time for which he was elected to any civil office which may have been created, or the emoluments of which shall have been increased, during such time.

"But something more is needed. There should be such amendments to our Constitution as will definitely and positively assure complete separation of the legislative and executive departments by enforceable prohibitions against membership in the General Assembly of any officer or employee of the executive department."

—Attorney-General Dennis G. Brummitt.

"This section is consistent with the Federal Constitution and would end a practice in North Carolina that has been the cause of distrust and the subject of severe criticism. The reference is to the practice of appointing to offices created by the General Assembly members of the Assembly who helped to create the offices and to fix

the pay."—Senator Capus M. Waynick, Chairman of the Senate Committee on Constitutional Amendments.

"Out of 3,000,000 other people there are always other citizens as capable of filling any office as the 170 in the House and Senate. The proposed provision has worked well for more than 100 years in the Federal Constitution, and the taxpayers of the State are entitled to this safeguard against having legislators create new offices, or increase the pay of existing offices, with the hope of personally enjoying those benefits. This provision will prevent the Governor from unduly influencing legislation by promising official appointments (as rewards for supporting his programs) to positions which his supporters in the General Assembly may create or make more remunerative." —Dr. Clarence Poe, of the Commission.

Art. III. The Executive Department

THE BUDGET

Present Constitution

ART. III, SEC. 7. ANNUAL REPORTS FROM OFFICERS OF EXECUTIVE DEPARTMENT AND OF PUBLIC INSTITUTIONS. *The officers of the Executive Department and of the public institutions of the State shall, at least five days previous to each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly; and the Governor may, at any time, require information in writing from the officers in the Executive Department upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.*

Proposed Constitution

ART. III, SEC. 8. EXECUTIVE BUDGET. *Within the first ten legislative days of each regular session of the General Assembly, unless such time shall be extended by the General Assembly for the session to which the report is to be submitted, the Governor shall submit to the General Assembly a budget setting forth a complete plan of proposed expenditures and anticipated income of all departments, offices and agencies of the State for each fiscal year of the next ensuing biennium, accompanied by appropriate bills to carry the proposals into effect. For the preparation of the budget the various departments, offices and agencies of the State shall furnish the Governor, or Governor-elect, such information, and in such form as he may require.*

THE CHANGE

At present officers of the Executive Department and public institutions are required to make reports at least five days before the regular session of the General Assembly; the proposal requires the reports to be related specifically to a Budget, to be submitted by the Governor to the General Assembly during the first ten days of its session, showing a complete plan of proposed expenditures and anticipated income of all departments, offices and agencies for each fiscal year of the next biennum.

THE PROBLEM

Should the budget principle receive constitutional sanction?

The Present Law

1. The present Constitution makes no provision for the Budget;
2. Biennial reports from the departments and institutions are sent to the General Assembly with the Governor's message;
3. The Governor may call for information from the officers of the executive department at any time;
4. Since the Executive Budget Act of 1925, setting up the budget machinery, the Governor has acted as Director of the Budget with power to adjust,

within limits, the appropriations to fit revenues available.

The present budget system is statutory and might be swept away by the General Assembly upon a wave of temporary unpopularity either of the budget itself or of the particular Governor.

Forty-six states, by constitution or otherwise, have adopted a budget system, and no one of these has abandoned it, according to A. E. Buck. The idea that governments—Federal, State, County and City—should be run in a business-like fashion is gaining prevalence; the governmental budget is an attempt to carry out the wishes of the people that government shall be administered economically and efficiently, (4 N. C. Law Rev. p. 17). The recent period of decreasing revenues demanded an effective method whereby legislative optimism in appropriations might be brought in line with reduced revenues in order to prevent mounting State deficits.

Essentials of the Budget Provision

1. The budget principle is given constitutional sanction.
2. Neither the present budget plan nor any other plan would become mandatory; details (such as, powers and duties of Governor, Budget Commission, State Auditor and State Treasurer, the power to "cut" appropriations and the distribution of appropriation "cuts" between legislative sessions) are legislative in nature and would remain subject to statutory control.

Criticism of the Budget Provision

Those opposed to the constitutional budget state:

1. Only the bare idea of the budget is included in the proposal; in substance the budget would remain a matter of legislative determination, enabling later General Assemblies to "amend the life out of it," thus in seeking to avoid legislative details in the Constitution, it has been claimed that there is a failure to state sufficiently the requirements of an effective budget.

Suggested Advantages of the Budget Provision

Those favoring the constitutional budget declare:

1. Although no absolute restrictions and requirements of a legislative nature are included (with consequent hampering of future advance in public finance administration eliminated), the proposal is a definite instruction to the Governor and would operate as a "warning sign" in case of any future disregard of the budget idea.
2. "The principal consideration in support of [a budget] is that in efficient and orderly management of public finances, which effective budget practice secures, lies the surest guarantee of the protection of the interests of the people in the administration of the State's finances." *Taxation and Public Finance in North Carolina,* joint study of the University, and Duke, Law Schools for the Constitutional Commission.
3. The proposal would write the budget idea into the organic law, giving it a permanence and stability which no purely statutory idea can have.

Quotations by Opponents and Proponents of the Budget

No pointed comment adverse to the proposal is available, but the

following statement of U. S. Circuit Court Judge John J. Parker, of the Commission, commends the provision:

> "The Governor is required, in advance of the convening of the Legislature, to prepare a budget, showing proposed expenditures and proposed sources of revenue, and to formulate bills carrying his proposals into effect and submit them to the General Assembly for consideration. The inevitable effect of this will be to give the Governor that Leadership in the State's affairs without which no State government can be successfully conducted.
>
> "The time has passed when the Governor of North Carolina can be a figurehead. He ought to be the leader of the people in the management of the people's business."

TAXATION OF EXECUTIVE OFFICERS' SALARIES

Present Constitution

ART. III. SEC. 15. COMPENSATION OF EXECUTIVE OFFICERS. *The officers mentioned in this article shall, at stated periods, receive for their services a compensation to be established by law, which shall neither be increased nor diminished during the time for which they shall have been elected, and the said officers shall receive no other emolument or allowance whatever.*

Proposed Constitution

ART. III. SEC. 15. COMPENSATION OF EXECUTIVE OFFICERS. *The officers mentioned in this article shall, at stated periods, receive for their services a compensation to be established by law, which shall neither be increased nor diminished except by tax levies common to others during the time for which they shall have been elected, and the said officers shall receive no other emolument or allowance whatever.*

THE PROBLEM

Should the salaries of executive officers be subject to taxation?

The Present Law

The salaries of executive officers are not now subject to tax levies imposed during the term for which they have been elected.

Essentials of the Proposal

Substantially no change is suggested, except that the proposal would subject these salaries to "tax levies common to others," whereas the present section prohibits the increase or decrease of the compensation of such officers during their term.

Criticism of the Revision

No pointed criticism of this provision has been made, but it has been observed that the present section prevents a dual control over the compensation of these officers; i.e. the State (a) as employer can raise or lower these salaries, and (b) as the taxing authority can further, indirectly, raise or lower the same salaries by levying, or witholding levy, for income taxes.

Suggested Advantages of the Revision

This would eliminate the present "constitutional discrimination" in favor of these officers; their salaries could be subjected to the same burden of taxes on incomes levied against the salaries of all other citizens.

(See discussion "Taxation of Judicial Salaries.")

Art. IV. The Judicial Department

Introductory Note

A study of the present and proposed provisions dealing with the judiciary may be better understood if indicated in connection with a concise outline of our judicial system. Such an outline (with bracketed references to the changes proposed) follows:

1. *The Senate*, the Court of Trial of Impeachments, which rarely sits in such capacity;

2. *The Supreme Court*, our final and highest appellate court;
   [*Proposed s. 3 provides for:* (*a*) *Sitting in Divisions, and* (*b*) *Increase in Membership.*]

3. *The Superior Court*, the general trial court with general criminal, legal and equitable jurisdiction;
   [*Proposed s. 5 deals with "Jurisdiction."*
   Proposed s. 6 deals with "Districts and Administration of the Superior Courts," providing for:
   (*a*) *An Administrative Chief Justice, and*
   (*b*) *Special Judges;*
   Proposed s. 7 deals with "Term of Office and Election of Judges";
   Proposed s. 10 deals with "Solicitors";
   Proposed s. 12 deals with "Taxation of Judicial Salaries";
   Proposed s. 8 deals with the "Judicial Council."]

4. *The Justice of the Peace*, or Magistrate's Court, a court of limited civil and criminal jurisdictions and certain powers of preliminary investigation in criminal matters;

5. *The Statutory Courts*

   (a) A limited number of special courts created by general laws and all of recent origin, such as the Juvenile Court and the Domestic Relations Court;

   (b) An almost endless list of local "inferior courts," of varying jurisdictions covering, geographically, sometimes towns, sometimes townships, sometimes counties and in a few instances governed by general laws, but more frequently by specific, special, local legislation with practically no uniformity, poorly drafted and more often ambiguous in provisions—all with little in common except that they are courts with a judge;

[*Proposed ss. 1 and 9 give the General Assembly the same general authority, to deal with all of these, which it now possesses with respect to inferior courts of purely statutory origin.*]

6. *Administrative Boards*
A steadily-growing list of commissions, commissioners, boards, and administrative bodies with quasi-judicial powers with respect to rules and regulations, such as the Industrial Commission, the Utilities Commissioner, and the State Board of Elections.

1. THE COURT OF TRIAL OF IMPEACHMENTS

Proposed ss. 1 and 2 consolidate and express concisely the present provisions of ss. 2, 3 and 4, Art. IV, except that the provision is added that upon the trial of a Lieutenant-Governor the Chief Justice shall preside.

2. THE SUPREME COURT

Present Constitution

ART. IV. SEC. 2. DIVISION OF JUDICIAL POWERS. *The judicial power of the State shall be vested in a Court for the Trial of Impeachments, a Supreme Court, Superior Courts, Courts of Justices of the Peace, and such other courts inferior to the Supreme Court as may be established by law.*

Proposed Constitution

ART. IV. SEC. 1. DIVISION OF JUDICIAL POWERS. *The judicial power of the State shall be vested in a Court for the Trial of Impeachments, a Supreme Court, Superior Courts and such other courts inferior to the Superior Courts as the General Assembly may ordain and establish.*

The only changes proposed are (a) the omission of specific reference to the Justices of the Peace (see subhead 4, herein) and (b) the empowering of the General Assembly to establish "other courts inferior to the Superior Court" (the present provision allows this as to "other courts inferior to the Supreme Court"). By omitting Justices of the Peace, the proposal would subject this office, its jurisdiction, and the manner of filling the office to legislative control. By allowing courts to be set up beneath the Superior Court, but not between the Supreme and the Superior Court, the present simplicity of our appellate court system will be preserved free from the confusion that has affected our inferior court system.

Present Constitution

ART. IV. SEC. 6. SUPREME COURT JUSTICES. *The Supreme Court shall consist of a Chief Justice and four Associate Justices.*

SEC. 7. TERMS OF THE SUPREME COURT. *The terms of the Supreme Court shall be held in the city of Raleigh, as now, until otherwise provided by the General Assembly.*

Proposed Constitution

ART. IV. SEC. 3. SUPREME COURT. *The Supreme Court shall consist of a Chief Justice and four Associate Justices; but the General Assembly may increase*

the number of Associate Justices when the work of the Court so requires. The Court shall have power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by three justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court in banc. *All sessions of the Court shall be held in the City of Raleigh.*

THE CHANGES

The proposal would make these changes: (a) Give the General Assembly power to increase the membership of the Court as the work requires it, (b) allow the Court to sit in divisions, but three must concur in any decision, except on constitutional questions upon which all must pass *en banc,* and (c) require all sessions to be held in Raleigh.

The Present Law

The membership of the Supreme Court was increased from three to five in the Constitution of 1868, reduced to three in 1875, and restored to five (the present number) in 1889. The present Constitution limits the number of Supreme Court justices to five and, by clear implication, all five except in emergencies shall sit as the Court in every case. From this constitutional strait-jacket neither the effort of the Court nor the aid of the Legislature can can furnish release.

Conditions Suggesting the Revision

1. The limitation upon the membership of the Court not only prevents a present increase in the Court, but would also effectively prevent any future relief from crowded dockets, which not only overwork the justices but hold in abeyance the settlement of the rights of litigants.
2. The present provisions by their clear implications that all justices shall, if possible, sit in deciding all cases, prohibit a portion of the members from absenting themselves from the arguments in order to prepare opinions.
3. Since the membership was restored to five, the population of the state has practically doubled, the number of Superior Court judges increased by more than 50 per cent, and the annual number of written opinions per judge enlarged by 65 per cent.

Essentials of the Supreme Court Revision

1. The Court is given power to sit in divisions (at least three concurring in every decision), except in involving State and Federal constitutional questions when the Court must sit *en banc.*
2. The General Assembly is empowered to increase the membership of the Court "when the work . . . so requires."

Thus, a two-fold answer is given to congested dockets:

(a) The Court is given a more flexible power to adjust itself so as to hear and decide cases more rapidly.

(b) This power to sit in divisions prevents an increase in membership from making the Court unwieldly, allowing the larger court the efficiency of a smaller one. Nine of the fourteen state courts permitted to sit in divisions have used the plan with apparent success (none of these has fewer than six judges and in none do fewer than three sit in a division); eleven of the fourteen courts have seven or more justices, indicating that the real value of the divisional plan would be gained only upon an increase in our present Court. At present four states and the District of Columbia have three justices on their courts of last resort, sixteen states including North Carolina have five, three states have six, eighteen states have seven, three states have eight, three states have nine, and one state has sixteen, justices on their highest court.

Criticisms of the Supreme Court Revision

1. To the proposition that the General Assembly should have the power to increase the number of justices if and when the work becomes overwhelming, no pointed objection has been raised.
2. To the divisional plan, objections are that it is untried here and confusion and dissatisfaction will result from decisions upon the opinion of only a portion of the Court with an increase in motions to re-hear, that there will be inconsistencies between the opinions of different divisions hearing similar questions; and, finally, that no one can know how the plan will be handled, whether the Chief Justice will sit with all divisions, how many will sit in a division, how often the personnel of the divisions will be changed, whether the divisions will specialize in types of cases, and whether lawyers will be able to select the division or whether this will be governed solely by the Court. These, and other reasons, have caused more than one-third of the courts permitted to sit in divisions to abandon the plan.

Suggested Advantages of the Supreme Court Revision

1. Increase in membership is the orthodox answer to overworked judiciaries —more work, more judges—and the General Assembly should have power to adjust the size of the Court to the tasks thrust upon it. The Commission avoided the creation of an intermediate appellate court with its complications, delays and expense and refused to sanction such temporary, palliative measures as providing commissioners or assistants to the Supreme Court, or requiring Superior Court judges to sit with the Supreme Court. The unwieldiness of the larger court and the increased difficulty of securing unanimity of opinion would be lessened by the use of the divisional plan.
2. The divisional plan would be largely a procedural change, with no more confusion or dissatisfaction than the change of any other major rule of the Supreme Court. No fewer than a majority of the present court (three) could render a decision, but these justices would be given a greater opportunity to study each case individually. The absence of me-

chanical details in the provision enables the court to adjust the procedure to meet changed or emergency conditions, just as is now done satisfactorily with respect to rules of the Court. Other courts, using the divisional plan, agree that after the first few months motions to re-hear have not been increased, and, as all opinions are based upon previous written opinions of the court, the danger of inconsistent opinions is small. This danger of inconsistency may be lessened further by (a) one member sitting in all divisions, and (b) the members alternating between divisions so that at all times at least one judge sitting shall have been a member of each previous division. Judge Parker, of the Commission, has stated, "Most of the appeals involve matters which could well be disposed of by a section of the Court composed of three judges." Chief Justice Stacy, of the Commission, told the joint Senate and House Committee, "One section would hear arguments, while another wrote opinions. That would take care of the situation for the next hundred years."

THE SUPERIOR COURT

Present Constitution

ART. IV, SEC. 10. JUDICIAL DISTRICTS FOR SUPERIOR COURTS. *The State shall be divided into nine judicial districts, for each of which a judge shall be chosen; and there shall be held a Superior Court in each county at least twice in each year, to continue for such time in each county as may be prescribed by law. But the General Assembly may reduce or increase the number of districts.*

SEC. 22. TRANSACTION OF BUSINESS IN THE SUPERIOR COURTS. *The Superior Courts shall be, at all times, open for the transaction of all business within their jurisdiction, except the trial issues of fact requiring a jury.*

Proposed Constitution

ART. IV. SEC. 5. SUPERIOR COURTS. *The Superior Courts shall be the courts of general jurisdiction and there shall be one such court in each county of the State. They shall be, at all times, open for the transaction of business, except the trial of issues of fact requiring a jury. Terms of Superior Court for the trial of jury cases shall be held in each county at least twice in each year.*

Proposed s. 5 states in express terms what has long been the accepted judicial practice in the state; i.e. the Superior Courts are the Courts of "general jurisdiction" in matters criminal and civil, legal and equitable. The provision that there shall be a Superior Court in each county at least twice a year (present s. 10) and the requirement that the Superior Court shall be open at all times for the transaction of all business except jury trials (present s. 22) are consolidated in the interest of conciseness in proposed s. 5, which also adds a constitutional definition of "Superior Courts" heretofore lacking.

Present Constitution

ART. IV, SEC. 10. JUDICIAL DISTRICTS FOR SUPERIOR COURTS. *The State*

shall be divided into nine judicial districts, for each of which a judge shall be chosen; and there shall be held a Superior Court in each county at least twice in each year, to continue for such time in each county as may be prescribed by law. But the General Assembly may reduce or increase the number of districts.

SEC. 11. RESIDENCES OF JUDGES, ROTATION IN JUDICIAL DISTRICTS, AND SPECIAL TERMS. *Every judge of the Superior Court shall reside in the district for which he is elected.... The judges shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in four years; but in case of the protracted illness of the judge assigned to preside in any district, or of any other unavoidable accident to him, by reason of which he shall be unable to preside, the Governor may require any judge to hold one or more specified terms in said district, in lieu of the judge assigned to hold the courts of the said district; and the General Assembly may by general laws provide for the selection of special or emergency judges to hold the Superior Courts of any county, or district, when the judge assigned thereto, by reason of sickness, disability, or other cause, is unable to attend and hold said court, and when no other judge is available to hold the same. Such special or emergency judges shall have the power and authority of regular judges of the Superior Courts, in the courts which they are so appointed to hold; and the General Assembly shall provide for their reasonable compensation.*

Proposed Constitution

ART. IV, SEC. 6. JUDICIAL DISTRICTS FOR SUPERIOR COURTS. *The General Assembly shall divide the State into judicial districts, for each of which one Superior Court Judge shall be chosen; but if the business of the Superior Court in any county shall become too great for one judge to administer, the General Assembly may provide for the election of one or more additional judges for the district in which such court is situate. Every judge of the Superior Court shall reside in the district for which he is elected, but the General Assembly may provide for the election or appointment of Special Superior Court Judges not assigned to any district, who may be designated from time to time by the Chief Justice to hold court in any district or districts within the State. The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court Judge to hold one or more terms of Superior Court in any district in lieu or in aid of the judge or judges assigned to that district. The General Assembly may divide the State into a number of judicial divisions. The judges shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in four years; but in case of the protracted illness of the judge assigned to preside in any district, or of any other unavoidable accident to him, by reason of which he shall be unable to preside, the Chief Justice may require any judge to hold one or more specified terms in said district, in lieu of the judge assigned to hold the courts of the said district.*

THE CHANGES

The proposal would make the following changes: (a) allow more than one judge to a district, (b) empower the Chief Justice

to assign judges to special terms and regular terms under special conditions.

THE PROBLEM

1. Should the assignment of judges be placed in the hands of the Chief Justice instead of the Governor?

2. Should the General Assembly be allowed to provide additional judges in districts having too much work for one judge to handle?

The Present Law

1. Twenty judicial districts, each with a judge and solicitor, have been provided by the General Assembly (s. 10).
2. Ten judges rotate in the Eastern Division, and ten in the Western Division. Accordingly, unless illness, special assignment or exchange occurs, a judge will preside (six months in each) in all the districts of his division every five years. Special assignment may carry a judge out of his division temporarily. Exchange of districts to meet the preferences and conveniences of judges is freely allowed by the Governor.
3. Special, emergency and regular judges are subject to special assignment in emergencies or when the Governor allows special terms to counties.

Special or Emergency Judges

In 1921 it was provided that justices and judges (of the Supreme and Superior Courts) retiring at 70 (after 15 years on the bench) should continue as emergency judges, subject to special assignment by the Governor.

In 1927 the Governor was authorized to appoint six Special Judges of the Superior Court, subject to assignment to particular terms, but the full number, in the interest of economy, are not now acting. (See also Pub. Laws 1933, c. 217, largely latent.)

The Constitution, apparently, uses the terms "emergency judge" and "special judge" interchangeably (s. 11, Art. IV.) The statute (C. S. 1435a) providing for emergency judges employs the same phrase, "special or emergency judges" in empowering generally, but uses the words "emergency judges" in describing the extent of their powers, thereby, apparently, creating two distinct types of judges; to-wit, (1) Special Judges and (2) Emergency Judges. Each district is now limited to "a judge" (s. 10, Art. IV), making it extremely doubtful whether a Special Judge could be named for only one district (s. 11, Art. IV), even though that district regularly requires more than one judge's time, the citizens of the district want an additional judge, and the General Assembly is willing to provide for one.

4. *No Separation of Solicitorial from Judicial Districts.* Every Judicial district has a solicitor (s. 23, Art. IV). A judicial district with extensive civil dockets often needs an additional judge but not an additional solicitor. In general the need is for more judges than solicitors.

Conditions Suggesting the Revision

1. A solicitor (handling only criminal matters) is not always needed when an additional judge (handling civil as well as criminal matters) is re-

quired. The Constitution does not limit the number of judicial districts, but the constitutional requirement that there shall be a solicitor for every regular judge has been a nettling and effective prohibition of relief to those districts needing only an additional judge.

2. Our judicial system is not unified. The fixing of special terms and the assignment of special and emergency judges and the special assignment of regular judges are all duties of the Governor, rather than the Chief Justice, the head of the judicial system.

Essentials of the Proposed Administrative Provisions for the Superior Court

1. Definite provision is made for "Special Superior Court Judges not assigned to any district" and the Chief Justice is given wide latitude in assigning judges of the Superior Court to hold specified terms when "in his opinion the public interest so requires."
2 The districts may be empowered by the General Assembly to elect one or more additional judges and the limitation that there shall be but one judge to a district is eliminated. The requirement of a solicitor for every district is also eliminated. No limitation upon the number, size or extent of the judicial districts is imposed.
3. Mandatory rotation of the judges would be continued.
4. The emergency judge is not mentioned; he would continue as a statutory judge subject to the General Assembly.

Criticism of the Proposed Revision

No criticism of these provisions have been noted; however this would change the status of the Chief Justice, requiring him to divide his attention between interpretative and administrative functions.

Suggested Advantages of the Proposed Revision

1. The provision for an administrative Chief Justice would be a definite, desirable unification and simplification of our judicial system, relieving the executive, enabling the chief judicial officer to administer the system of trial courts along lines most conducive to efficient operation, and further removing the judiciary from the control of the more politically-sensitive executive department.
2. These provisions separate the judicial from the solicitorial districts, and, further, allow more than one judge to a district. "Thus," Senator Capus M. Waynick, of the joint Senate and House Committee on Constitutional Amendments, has said, "provision would be made to take care of the very genuine need of the districts where the judges are overworked and the solicitor has little to do."
3. Mandatory rotation of the judges is continued, freeing the judiciary from local politics and pressure and by giving the judges a wider view of the law in action produces a better-informed, less provincial judiciary.

(The Commission and Joint Committee left rotation of judges to the General Assembly, but a floor amendment restored the present mandatory rotation.)

Present Constitution

ART. IV. SEC. 21. ELECTION, TERMS OF OFFICE, ETC., OF JUDGES OF THE SUPREME AND JUDGES OF THE SUPERIOR COURTS. *The Justices of the Supreme*

Court shall be elected by the qualified voters of the State, as is provided for the election of members of the General Assembly. They shall hold their offices for eight years. The judges of the Superior Courts, elected at the first election under this amendment, shall be elected in like manner as is provided for Justices of the Supreme Court, and shall hold their offices for eight years. The General Assembly may, from time to time, provide by law that the judges of the Superior Courts, chosen at succeeding elections, instead of being elected by the voters of the whole State, as is herein provided for, shall be elected by the voters of their respective districts.

SEC. 25. VACANCIES. *All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly, when elections shall be held to fill such offices. If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such offices shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.*

Proposed Constitution

ART. IV. SEC. 7. TERM OF OFFICE AND ELECTION OF JUDGES. *Justices of the Supreme Court and Judges of the Superior Courts shall be elected by the people and shall hold office for a term of eight years and until their successors are elected and qualified; but Special Superior Court Judges not assigned to any district shall be elected or appointed for such term as the General Assembly may determine, and such special Superior Court Judges shall have the same jurisdiction, power and authority in the Courts which may be held by them as is now conferred upon and exercised by the regular judges of the Superior Courts of the State. Justices of the Supreme Court shall be elected by the voters of the whole State. Judges of the Superior Courts may be elected by the voters of the whole State or by the voters of their respective districts or divisions as the General Assembly may provide. The Governor shall by appointment fill all vacancies occurring from death, resignation or otherwise, until the next election to be held more than thirty days after such vacancy has arisen.*

Proposed s. 7 (present s. 21) adds (a floor amendment) that Special Superior Court Judges shall be elected, or, appointed, as the General Assembly directs but with the same authority and jurisdiction as regular judges. Judges of the Superior Court and Justices of the Supreme Court would continue to be elected by voters of the entire state, but the General Assembly could alter this as to Superior Court judges. Vacancies would be filled by appointment as now (present s. 25) with this new limitation, that in case the next election is to be within thirty days after the vacancy arises, apparently, no appointment is to be made meanwhile, thus allowing candidates offering themselves for this office to be on a parity so far as any advantage is derived from the

mere incumbency of office. [The last sentence is subject also to the interpretation that in the event an election is not to be held "more than thirty days after the vacancy has arisen" the Governor may appoint a successor to serve until the next succeeding election, but this appears as the less obvious interpretation of the intent of the drafters.]

THE SOLICITOR

Present Constitution

ART. IV. SEC. 23. SOLICITORS FOR EACH JUDICIAL DISTRICT. *A solicitor shall be elected for each judicial district, by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf of the State, in all criminal actions in the Superior Courts, and advise the officers of justice in his district.*

Proposed Constitution

ART. IV. SEC. 10. SOLICITORS. *A solicitor shall be elected for each judicial district, or for such other division of the State as the General Assembly may determine, by the qualified voters thereof. He shall hold office for the term of four years and shall prosecute on behalf of the State in all criminal actions in the Superior Courts, advise the officers of justice in his district and perform such other duties as may be imposed on him by law.*

At present the solicitor (1) prosecutes criminal actions in behalf of the State, and (2) to a varying degree advises court officers and officials in their judicial districts. There must be a solicitor for each district (see discussion of proposed s. 6), and (1) his district can not be reduced or increased, nor (2) can his duties be increased. The proposal retains the same term and duties, but (a) he may be elected for a judicial district or "such other division of the state as the General Assembly" may determine, and (b) in addition to his present duties he shall "perform such other duties as may be imposed upon him by law." The judicial and solicitorial districts would no longer necessarily be coterminus; thus the solicitorial districts might be made larger while the judicial districts were made smaller, or these districts might be continued coterminus but the duties of solicitors increased. None of these changes can now be made. (See discussion of proposed s. 6.)

Criticisms of the Solicitorial Changes

The following objections have been noted:

1. The proposal places the solicitorial system entirely under the control of the legislative branch, subjecting it to political tampering and gerrymandering, and laying it open to discrimination in favor of, or against, particular new districts which may be created.
2. It imposes no restrictions upon the area of districts or the type or extent

of new duties of solicitors, with the result that there may be considerable variability every two years in the work-load of particular solicitorships.

3. Legislative abuse of flexible powers could discourage the abler lawyers from seeking the office with resultant injury to the effective administration of justice.

Suggested Advantages of the Proposed Solicitorial Changes

The following advantages have been indicated:

1. The rigidity of the present solicitorial system has frequently thwarted attempts to make more equitable the distribution of labors among solicitors; the proposal relaxes this rigidity.
2. The same flexibility of powers would enable the General Assembly to make changes in keeping with the shifts of population or other conditions producing concentration of large numbers of criminal cases within limited areas. This flexibility of power is best placed in the General Assembly, so that unfair or unsound measures are subject to popular review biennially.
3. Additional duties could be placed upon the solicitor; if these became too onerous or the area of the district too burdensome, the area could be reduced, thus assuring that the office can be made at all times sufficiently attractive to secure good and able men.

TAXATION OF JUDICIAL SALARIES

Present Constitution

ART. IV, SEC. 18. FEES, SALARIES, AND EMOLUMENTS. *The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this article; but the salaries of the judges shall not be diminished during their continuance in office.*

Proposed Constitution

ART. IV, SEC. 12. FEES, SALARIES, AND EMOLUMENTS. *The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this article; but the salaries of Justices of the Supreme Court and Judges of the Superior Courts shall not be diminished except by tax levies common to others during the time for which they shall have been elected.*

THE CHANGES

The proposal preserves the present section, adding that the salaries of Supreme Court justices and Superior Court judges shall be subject to income or other taxes "common to others" during the time for which they have been elected, as a substitute for the present requirement that they shall not be "diminished during their continuance in office."

THE PROBLEM

Should judicial salaries be subject to income and other state taxes?

The Present Law

The Supreme Court in an advisory opinion declared that the words "shall not be diminished during their continuance in office" (present s. 18) exempted these salaries of Supreme Court justices and Superior Court judges from taxation, and in *Long v. Watts*, 183 N. C. 99, held unconstitutional an attempt to tax such salaries during their term of office, even though these salaries were increased during that term in office. Apparently, "during continuance in office" means during that elected term; if this assumption is correct, no tax can now be imposed upon the judges' salaries *during their elected terms.*

In 1933 the General Assembly sought to tax these incomes by taxing the incomes of all officials taking office after the date of ratification of the measure (See Pub. Laws 1933, c. 445, s 317.1). Any such judge elected or appointed since the ratification date finds his salary subject to income tax, and if subsequent Revenue Acts continue this provision (assuming that it accomplishes its purpose) eventually the salaries of all judges could be reached for income taxes, but meanwhile, until all terms running at the date of ratification have expired, some of these judges would be liable for such taxes but others would not. Under the view presented above an income tax immediately effective against all judges alike would now be unconstitutional.

Condition Suggesting the Need of the Revision

The view seems to be widely held that all state officials, including judges, should be subjected to the payment of the same taxes demanded of other citizens. Those most strongly favoring this view urge that of all people those who are paid by taxation should contribute to the tax fund.

Essentials of the Taxation Provision

These judicial salaries would be subjected to tax levies "common to others" during the term for which they are elected. The general purpose is clear, but three minor ambiguities affect the clarity of the section: (1) The meaning of the phrase "common to others" may mean common to other judges, to other state officials, to other officials, or even common to other citizens; (2) it is difficult to say with absolute certainty whether the General Assembly must tax judges' salaries or simply may do so; (3) presumably those appointed would stand upon the same basis as those elected, but this is not expressly stated. None of these details affect the

clear elimination of the present constitutional prohibition against taxing judges' salaries; the detailed interpretation of the specific application to a particular case is, of course, a matter for the Supreme Court.

The proposal retains the prohibition against the reduction of judicial salaries during the terms for which they have been elected, but in the light of the recent action of the judiciary in waiving this constitutional guarantee and accepting the same horizontal cut in salaries imposed on other officers, the retention of the present statements of principle does not appear to be an objectionable provision.

THE JUDICIAL COUNCIL

Present Constitution

(No entirely analogous provision)

ART. IV, SEC. 12. JURISDICTION OF COURTS INFERIOR TO SUPREME COURT. *The General Assembly shall have no power to deprive the Judicial Department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government; but the General Assembly shall allot and distribute that portion of this power and jurisdiction which does not pertain to the Supreme Court among the other courts prescribed.*

Proposed Constitution

ART. IV, SEC. 8. THE JUDICIAL COUNCIL. *The Chief Justice and Associate Justices of the Supreme Court and the Judges of the Superior Courts shall constitute a Judicial Council, which shall meet once each year at the call of the Chief Justice. Except as otherwise provided in this Constitution, the Judicial Council shall have power to make, alter and amend all rules relating to pleading, practice and procedure in the several courts of the State except in the Supreme Court, the practice and procedure of which shall be prescribed by the rules of that Court.*

THE PROBLEM

Should all rules relating to pleading, practice and procedure, now governed by statutes, be left to the determination of the judiciary?

The Present Answer

1. The proposal leaves to the Supreme Court, as at present, the formulation of the rules of procedure and practice in that Court (s. 12, Art. IV).
2. Under the present Constitution, all matters of pleading, procedure and practice in both civil and criminal cases, are governed by statutes of the General Assembly.

Procedure and Practice: Criminal Cases:

We have never had a thoroughly unified and complete code of criminal procedure, although our present Criminal Procedure (C.S., c. 83) displays a crude unity to the extent of grouping under the proper major sub-heads the various provisions of procedure. Piece-meal amendment

biennially has given it a patchwork appearance and, often a legal effect, not altogether complimentary to our legal system.

Procedure and Practice: Civil Cases:

Pleading, procedure and practice in civil cases have been made relatively coherent by the adoption in North Carolina of a modification of the Field Code (New York), known as the Code of Civil Procedure (C. S. c. 12). Attorney-General Homer S. Cummings recently declared that the Field Code now has almost ten times as many provisions as originally, all the new provisions being statutory. A similar barrage of statutory amendments has been directed upon our Code, which now reveals in many instances the appearance of a legislative scrap-book.

Three important short-comings of the legislative rule-making power should be noted:

(a) Legislatures are essentially public forums of large membership composed of laymen from all walks of life and are adapted primarily to the determination of general policies, but poorly adapted to the scholarly handling of details and scarcely fitted for thoroughgoing, unified revision and modernization of lengthy, technical, statutory enactments governing procedural detail.

(b) A change in one statute inevitably affects the operation of one or more related statutes, throwing them out of alignment with their original purpose; procedural, as well as substantive, "laws" being instruments governing the conduct of the variable human can not exist in statute-tight compartments. It is this secondary effect of the legislative process upon procedural rules which has the most damaging result, since rarely does the author or sponsor of the amending law remedy more than the primary error of law, leaving these secondary ambiguities to plague litigants, lawyers, and judges.

(c) When ambiguities in statutes appear, the courts must make "judicial guesses" at the particular intent of the General Assembly. Naturally these judicial interpretations of legislative intent are often delayed for months and are often different from the views held by individual legislators who helped enact the provision.

Conditions Suggesting the Judicial Council

1. A substantial body of legal authorities has long advocated placing the power to enact the procedural rules of courts in the hands of the judges who best know the needs of the court machinery and the conditions which it must serve, instead of placing it in the hands of laymen in the General Assembly. The Council could correct almost immediately flaws in procedure; it could patiently revise the procedure by subject-matter rather than by sections; it would largely eliminate decisions turning upon "legislative intent."
2. The General Assembly corrects only the most glaring and specific errors in procedure, but no present body assures the constant, general and unified revision of procedure which would keep it both modernized and structurally complete and consistent.
3. The modern tendency is to allow each department to work out its own

procedural regulations, rather than have these prepared and enacted by laymen unfamiliar with the particular needs and conditions of the particular field.

Essentials of the Judicial Council Proposal

1. The Council proposed would be composed of the Justices of the Supreme Court and the Judges of the Superior Court, meeting annually at the call of the Chief Justice.
2. The Council would have power "to make, alter and amend all rules relating to pleading, practice and procedure in the several courts of the state" except: (a) in the Supreme Court, and (b) when otherwise provided by this Constitution.

   [*The General Assembly has already delegated this rule-making power to the Supreme Court, at least partially, (C. S., ss. 1421, 1421a) but in practice the Supreme Court has been so confined by the strictly judicial function that it could not effectually exercise the power. However, such delegation of this power indicates the recognition by the General Assembly that the judiciary is the proper source of procedural rules.*]

Criticisms of the Judicial Council Proposal

1. The judiciary is already overworked with purely judicial duties;
2. This proposal would strip the General Assembly of this legislative function; citizens could no longer by direct legislative action change "judge-made" rules;
3. The analogy to administrative boards is faulty, as the rules of such boards are almost invariably subject to judicial review, but under the proposal no one would review the rules of the judges for the courts;
4. The unrestrained power of the Council might bring wave after wave of procedural change with constant disturbances of settled practices and uncertainty as to legal requirements.

Suggested Advantages of the Judicial Council

This proposal vests the rule-making power in the hands of practical experts—trial and appellate judges—familiar with the rules and the conditions to which they will be applied. The advantages noted are:

1. The judiciary can spare this time equally as well as a busy General Assembly struggling with a thousand general problems; a single meeting each year should, in the course of the year, by its clarification of the rules more than justify itself in the saving of time for the courts.
2. The transfer of the rule-making power to the Council is merely the transfer from one group of elective officials to another, both answerable to the electorate (many courts without express constitutional sanction have declared this power to be inherent in the courts), by this transfer eliminating the always-troublesome question of "legislative intent," substituting scholarly revision for "patchwork amending," allowing faulty rules and unforeseen secondary effects to be corrected annually, giving the conservative courts a new latitude in interpreting rules rather than statutes, and granting to the courts the same power as to procedural rules now exercised by such administrative bodies as the Industrial Com-

mission and the Utilities Commissioner (within wide limits the rules of such bodies are never challenged and even if attacked, courts can disturb them only if "unfair," "unreasonable" or "discriminatory").

3. In the words of U. S. Circuit Court Judge John J. Parker, "The best thought in legal circles is that procedure in the courts should be prescribed by rules of court; and our idea is that these rules should be formulated, not by the Supreme Court, but by all of the judges sitting in council . . . I know the judges of the North Carolina courts, and I have no hesitation in saying that, if this provision is placed in the fundamental law of the state, North Carolina will in a few years, develop the best system of procedure in this country, if not in the world." U. S. Attorney-General Homer S. Cummings recently declared with respect to a similar provision for the Federal courts, that 80% of the district judges, 75% of the circuit judges, 45 State Bar Associations, and four recent Presidents of the United States favored such a transfer of the rule-making power.

5. THE INFERIOR COURTS

Present Constitution

ART. IV, SEC. 12. JURISDICTION OF COURTS INFERIOR TO SUPREME COURT. The *General Assembly shall have no power to deprive the Judicial Department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government; but the General Assembly shall allot and distribute that portion of this power and jurisdiction which does not pertain to the Supreme Court among the other courts prescribed in this Constitution or which may be established by law, in such manner as it may deem best; provide also a proper system of appeals; and regulate by law, when necessary the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with other provisions of this Constitution.*

Proposed Constitution

ART. IV, SEC. 9. COURTS INFERIOR TO THE SUPERIOR COURTS. *The General Assembly shall provide by general laws for the creation and jurisdiction of courts inferior to the Superior Courts with appeal therefrom to the Superior Courts; but shall pass no special or local laws with relation to such courts. Courts of special or limited jurisdiction now existing in North Carolina, including courts of justices of the peace, shall be continued until otherwise provided by the General Assembly as a result of the passage of general laws under this section.*

THE CHANGE

Both proposed ss. 1 and 9 and present ss. 2 and 12, empower the General Assembly to set up and define the jurisdictions of the inferior courts, but the proposals omit (a) the prohibition that the Judicial Department shall not be deprived of any power or jurisdiction which rightfully pertains to it, and (b) the rule-making power of the General Assembly.

THE PROBLEM

What provision should be made for uniform inferior courts?

The Present Law

A The Justices of the Peace:

The Justice of the Peace, constitutionally, is a fixed unit in our judicial structure, both his jurisdiction (s. 27, Art. IV) and the manner in which he may obtain office (s. 28, Art. IV; ss. 5, 11, 14, Art. VII) being written into the constitution with considerable finality. Other sections all related specifically to Justices of the Peace, provide for jury trials, appeals, filling vacancies, election or appointment, and holding other offices (s. 29, Art. II; ss. 2, 27, 28, Art. IV; ss. 5, 11, 14 Art. VII; s. 7 Art. XIV). Statutes have amplified these details, but, generally, the office, its powers, its duties and the manner whereby it is to be filled, have been impervious to change. [*It is beyond the scope of this study to analyze the criticisms of the Justice of the Peace. See 32* N. C. BAR ASS'N REPORTS *p. 194 (James McClamrock); 6* N. C. LAW REVIEW *p. 349 (Kemp D. Battle);* PROCEEDINGS OF N. C. CONSTITUTIONAL COMMISSION, *1931-32, p. 51 (Professor Fred B. McCall)*]

Manner of Appointment or Election; Control of Numbers:

1. The General Assembly biennially appoints ("omnibus bill") more than one thousand Justices of the Peace.
   [*Under the present Constitution the General Assembly may refuse to make appointments, and may even deprive the Governor of his power of appointment (s. 14, Art. VII). However, (a) practically every member is obligated to secure one or more such local appointments; (b) members would reluctantly destroy this form of party patronage; (c) the General Assembly is not likely to restrict its own powers voluntarily.*]
2. Each general election hundreds of magistrates are popularly elected.
   [*The General Assembly may restrict (s.5, Art. VII) or entirely eliminate the election of township magistrates (s.14, Art. VII). However, (a) this course would offend all elected magistrates who are party workers, and (b) this would result in fewer, active local workers to assist in electing members of the General Assembly, since magistrates, when running, usually work for the "whole ticket."*]
3. The Governor, by appointment, adds an unlimited number of magistrates.
   [*(1) The General Assembly may remove this power of appointment, or (2) the Governor may refuse to make further appointments. However, (a) this would result in the loss of this minor form of patronage; (b) refusal to appoint might offend politically-active citizens who seek appointments largely as a local honor; (c) such refusal would be a voluntary weakening of the Governor's power and would set a precedent against ever vesting in the Governor, ultimately, the power to appoint all such magistrates.*]
4. The Clerks of the Superior Court appoint succesors when vacancies

occur. This power is constitutional, and can not be weakened by statute.

[*Relatively few magistrates secure office through this method. The exercise of this power of appointment has often been curbed in particular instances through the intercession of local leaders at the Bar and by resolutions of local Bar Associations requesting the Clerk not to fill the vacancy.*]

It is obvious, then, that the serious difficulties in limiting the numbers of Justices of the Peace are practical rather than constitutional, and might be largely overcome by giving the same departments similar powers to provide for, or appoint, other equivalent judicial officers substituted for the Justice of the Peace in our judicial system.

Jurisdiction Fixed by the Constitution

The detailed provisions setting forth the jurisdiction of Justices of the Peace (s. 27, Art. IV) prohibit any attempt to adjust the magistrate to a more desirable inferior court system either by increasing his powers and making the office more important or decreasing the powers and making it less significant.

B. Other Inferior Courts

Under the present Constitution (ss. 2, 12, Art. IV) the General Assembly has power to set up any and all courts, general or special, criminal or civil between the Supreme Court and the Justice of the Peace. Fortunately for the simplicity of our judicial structure and the inexpensiveness of justice, no court has been established between the Supreme Court and the Superior Court, but below the Superior Court the General Assembly has created a maze of courts (District County Courts, General County Courts, County Civil Courts, Civil County Courts, County Recorders Courts, Municipal Recorders Courts, Municipal County Courts, Domestic Relations Courts, and scores of others, operating under general or special laws). The General Assembly might revoke these laws and set up a uniform system of inferior courts between the Superior Court and the Justice of the Peace.

Suggested Inferior Court Reforms Limited by Constitutional Provisions

1. Retention of the Justice of the Peace, with restrictions on his present powers or an increase of his present powers.
   [*Prohibited by s. 27, Art. IV*]
2. Retention of the Justice of the Peace with present, decreased or increased powers but with restrictions as to appointment and election, character, qualification, compensation, etc.
   [*Prohibited largely by sections already discussed, particularly, ss. 5, 11, Art. VII and ss. 2, 27, Art IV, but possible to the extent that jurisdiction (ss. 2, 27, Art. IV) is not involved (s. 14, Art. VII)*]
3. Elimination of the Justice of the Peace, and expansion of the powers and duties of the Superior Court with respect to minor cases, by the use of referees and commissioners to handle particular cases or specified classes of cases.

[*Prohibited by Constitution, particularly ss. 2, 27, Art. IV.*]

4. Elimination of the Justice of the Peace and establishment of a system of inferior courts with fewer courts, higher qualifications, compensation by salary, and broader powers.
[*Prohibited by Constitution, particularly ss. 2, 27, Art. IV.*]

Thus, it is apparent that the office of Justice of the Peace is cast in constitutional concrete (his powers can neither be increased nor decreased, his qualifications neither raised nor lowered, although the manner of his selection can be regulated), so that however desirable or universally demanded reforms may be, whether by the magistrates themselves or the citizenry at large, no substantial change or improvement seems likely to be made with respect to Justices of the Peace under the present Constitution.

Conditions Suggesting the Revision

1. The present provision regarding jurisdiction and manner of securing the office make it difficult to alter and improve the Justice of the Peace system, either separately or in conjunction with a new inferior court system.
2. The confusion and complication resulting from the host of diverse, overlapping and unsatisfactory minor courts, are particularly due to special or local legislation, which has emphasized the need of a general, uniform inferior court system.

Essentials of the Inferior Court Proposal

1. All inferior courts (courts below the Superior Court), including Justice of the Peace, would continue until otherwise provided for.
2. The General Assembly would be given full power to provide for the creation and jurisdiction of inferior courts by general laws only, special or local laws being prohibited.
Thus, the Justice of the Peace would become a statutory judge with such restrictions (upon jurisdiction, term, manner of selection, compensation, etc.) as the General Assembly may provide; the power of the General Assembly over other inferior courts would remain complete, as at present, except for the restriction noted above.

Criticisms of the Inferior Court Proposal

1. This would result in a further focusing in the General Assembly, of power now exercised by the electorate, and an ultimate increase in the power of the Governor through the veto power, the control of patronage, and the general authority of the executive over the members of the General Assembly, all factors tending to subject the inferior court system to biennial change.
2. A unified court system would attempt to force upon the small town and rural community, courts adapted to large cities and towns only; the present localized court is carved to fit the particular community and a general, uniform system must, of necessity, ignore peculiar local conditions and embrace only such provisions applicable to all communities alike. The Justice of the Peace system has usually worked well in small towns and rural communities; these local preferences may be ignored in a uniform system moulded to fit general conditions in the state. Further, such dependence

of the Justice of the Peace upon the General Assembly would encourage a partial subservience of the local judiciaries to the legislative representatives.

3. This provision is a limitation upon the General Assembly which, many feel, should be free to enact any legislation practically without limit.
4. Strong partisans of uniformity feel that this provision could be easily evaded (1) by setting up a large number of classifications based upon narrow ranges of population, many towns could retain their courts unchanged and in effect remain outside of the desired general uniformity, and (2) the wholesale exemption of counties or towns from a general law either by (a) condition and proviso in the measure, or (b) by express exemption, would, in effect, convert general uniform laws into special laws.

Suggested Advantages of the Inferior Court Proposal.

1. Since the present and proposed provisions (except as to the jurisdiction of Justices of the Peace which can not now be altered) are substantially the same both for the Justices of the Peace and the inferior courts, objections which can be urged against the proposal could with almost equal force be urged against the present Constitution, as the proposal in clear terms permits only what can now probably be done under the present Constitution, with the single exception of a change in the jurisdiction of the Justice of the Peace.
2. This provision would make the problems of the local courts state-wide and assure the consideration of large numbers rather than the one or two local individuals, often personally interested, which is usually the present situation.
3. The provision does not contemplate that a single court would be set up for all communities, but classifications would be worked out on the basis of local needs and a court carefully shaped to fit each classification. A vote of the people might be allowed to determine the classification to be adopted, thus retaining largely the advantages of both the uniform and the special, local court.
4. The criticisms that the uniform provisions could be evaded are at most only guesses, as the present Constitution does not demand uniformity nor does it effectively prohibit local legislation, while the proposal embodies both of these preventives of evasion. Such an express requirement of uniformity is not even attempted by statute at present and the least to be expected from it is an encouragement of uniformity in the local courts, especially since the new provision would enable the Supreme Court to stand guard against attempts to set up, by indirection, special or local courts.
5. The provision would encourage the General Assembly to draw upon the experience derived from these diverse, special courts in drafting the uniform act with respect to powers and duties of the courts and in providing for more systematized and less confusing appeals. The resulting familiarity of the judges, solicitors and lawyers with uniform types of courts, rather than dozens of dissimilar courts with peculiar provisions and practices, should produce a less confusing and more uniform practice and administration.

Art. V. Revenue, Taxation and Public Debt

By HENRY P. BRANDIS, JR.

Introductory Note

The present and the proposed provisions with respect to revenue, taxation and public debt may be divided into two main divisions, each of which has two sub-divisions, as follows:

I. *State Fiscal Policy*

A. State Taxation (Proposal Art. V., ss. 1 and 6; Art. VIII, s. 2; Art. XI, s. 1. Present Art. V., ss. 3, 5, 6, 7).

B. State Debt and Finance (Proposal Art. V., ss. 2, 7, 8. Present Art. I, s. 6; Art. II, s. 30; Art. V., s. 4; Art. XIV, s. 3).

II. *Local Fiscal Policy*

A. Local Taxation (Proposal Art. V, ss. 3, 4, 6; Art. VIII, s. 2; Art. XI, s. 1. Present Art. V, ss. 1, 2, 3, 5, 6; Art. VII, s. 9; Art. VIII, s. 4).

B. Local Debt and Finance (Proposal Art. V, ss. 4, 5, 7, 8. Present Art. II, s. 30; Art. VII, ss. 7, 8, 13; Art. VIII, s. 4).

Present Constitution

ART. I. SEC. 6. PUBLIC DEBT; BONDS ISSUED UNDER ORDINANCE OF CONVENTION OF 1868, '68-'69, '69-'70, DECLARED INVALID; EXCEPTION. *The State shall never assume or pay, or authorize the collection of any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; nor shall the General Assembly assume or pay, or authorize the collection of any tax to pay, either directly or indirectly, expressed or implied, any debt or bond incurred, or issued, by authority of the Convention of the year one thousand eight hundred and sixty-eight, nor any debt or bond incurred or issued by the Legislature of the year one thousand eight hundred and sixty-eight, either at its special session of the year one thousand eight hundred and sixty-eight, or at its regular sessions of the years one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, and one thousand eight hundred and sixty-nine and one thousand eight hundred and seventy, except the bonds issued to fund the interest on the old debt of the State, unless the proposing to pay the same shall have first been submitted to the people, and by them ratified by the vote of a majority of all the qualified voters of the State at a regular election held for that purpose.*

ART. II. SEC. 30. *The General Assembly shall not use nor authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which said sinking fund has been created.*

ART. V. SECTION 1. CAPITATION TAX; EXEMPTIONS. *The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied. The commissioners of the several counties and of the cities and towns may exempt*

from the capitation tax any special cases on account of poverty or infirmity.

SEC. 2. APPLICATION OF PROCEEDS OF STATE AND COUNTY CAPITATION TAX. *The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose.*

SEC. 3. TAXATION SHALL BE BY UNIFORM RULE AND AD VALOREM; EXEMPTIONS. *Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and also, all real and personal property, according to its true value in money:* PROVIDED, *notes, mortgages, and all other evidences of indebtedness, or any renewal thereof, given in good faith to build, repair, or purchase a home, when said loan does not exceed eight thousand dollars ($8,000), and said notes and mortgages and other evidences of indebtedness, or any renewal thereof, shall be made to run for not less than one nor more than thirty-three years, shall be exempt from taxation of every kind for fifty per cent of the value of the notes and mortgages:* PROVIDED, *the holder of said note or notes must reside in the county where the land lies and there list it for taxation:* PROVIDED, FURTHER, *that when said notes and mortgages are held and taxed in the county where the home is situated, then the owner of the home shall be exempt from taxation of every kind for fifty per cent of the value of said notes and mortgages. The word "home" is defined to mean lands, whether consisting of a building lot or larger tract, together with all the buildings and outbuildings which the owner in good faith intends to use as a dwelling place for himself or herself, which shall be conclusively established by the actual use and occupancy of such premises as a dwelling place of the purchaser or owner for a period of three months. The General Assembly may also tax trades, professions, franchises, and incomes:* PROVIDED, *the rate of tax on income shall not in any case exceed six per cent (6%), and there shall be allowed the following exemptions, to be deducted from the amount of annual incomes, to-wit: for married man with a wife living with him, or to a widow or widower having minor child or children, natural or adopted, not less than $2,000; to all other persons not less than $1,000, and there may be allowed other deductions (not including living expenses) so that only net incomes are taxed.*

SEC. 4. RESTRICTIONS UPON THE INCREASE OF THE PUBLIC DEBT EXCEPT IN CERTAIN CONTINGENCIES. *Except for refunding of valid bonded debt, and except to supply a casual deficit, or for suppressing invasions or insurrections, the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State to an amount exceeding in the aggregate, including the then existing debt recognized by the State, and deducting sinking funds then on hand, and the par value of the stock in the Carolina Railroad Company and the Atlantic and North Carolina Railroad Company owned by the State, seven and one-half per cent of the assessed valuation of taxable property within the State as last fixed for taxation. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of*

the State, and be approved by a majority of those who shall vote thereon.

SEC. 5. PROPERTY EXEMPT FROM TAXATION. *Property belonging to the State, or to municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable, or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers; libraries and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars.*

SEC. 6. TAXES LEVIED FOR COUNTIES. *The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act:* PROVIDED, *this limitation shall not apply to taxes levied for the maintenance of public schools of the State for the term required by article nine, section three, of the Constitution:* PROVIDED, FURTHER, *the State tax shall not exceed five cents on the one hundred dollars value of property.*

SEC. 7. ACTS LEVYING TAXES SHALL STATE OBJECTS, ETC. *Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.*

ART. 7. SEC. 7. NO DEBT OR LOAN EXCEPT BY A MAJORITY OF VOTERS. *No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.*

SEC. 8. NO MONEY DRAWN EXCEPT BY LAW. *No money shall be drawn from any county or township treasury except by authority of law.*

SEC. 9. TAXES TO BE AD VALOREM. *All taxes levied by any county, city, town, or township shall be uniform and* AD VALOREM *upon all property in the same, except property exempted by this Constitution.*

SEC. 13. DEBTS IN AID OF THE REBELLION NOT TO BE PAID. *No county, city, town, or other municipal corporation shall assume to pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid of or support of the rebellion.*

ART. VIII. SEC. 4. LEGISLATURE TO PROVIDE FOR ORGANIZING CITIES, TOWNS, ETC. *It shall be the duty of the Legislature to provide by general laws for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessment and in contracting debts by such municipal corporations.*

ART. XIV. SEC. 3. DRAWING MONEY. *No money shall be drawn from the Treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.*

Proposed Constitution

ARTICLE V

REVENUE, TAXATION AND PUBLIC DEBT

SECTION 1. STATE TAXATION. *The power of taxation shall be exercised*

in a just and equitable manner, and shall never be surrendered, suspended or contracted away. Taxes shall be levied only for public purposes, and every act levying a tax shall state the object to which it is to be applied.

SEC. 2. LIMITATION ON STATE DEBT. *The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State for the following purposes:*

To fund or refund a valid existing debt;

To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes;

To supply a casual deficit;

To suppress riots or insurrections, or to repel invasions.

For any purpose other than these enumerated, the General Assembly shall have no power to contract new debts in excess of two-thirds of the amount by which its outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State, and be approved by a majority of those who shall vote thereon. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation. The State shall never pay any debt incurred in the prosecution of the War Between the States, or for the emancipation of any slave, or pay any outstanding bonds issued by the so-called Reconstruction Legislatures of 1868, 1869, and 1870, or the Convention of 1868, which said bonds have been declared invalid by prior constitutions.

SEC. 3. COUNTY AND MUNICIPAL TAXATION. *The General Assembly shall, by general laws, provide a uniform system of taxation for the counties, cities, towns or other municipal corporations; and no county, city, town or other municipal corporation shall exercise the power of taxation except in accordance with such general laws.*

SEC. 4. SUPERVISION OF TAXES AND FINANCES OF LOCAL GOVERNMENT. *The General Assembly shall, by general laws, provide appropriate regulations governing the budgets and tax levies of counties, cities, towns and other municipal corporations, and prescribe the method by which public notice of such budgets and tax levies shall be given.*

SEC. 5. COUNTY AND MUNICIPAL INDEBTEDNESS LIMITED. *No county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit unless by a vote of the majority of the qualified voters thereof, except for the purpose of funding or refunding a valid existing debt, or meeting appropriations made for the current fiscal year in anticipation of the collection of taxes and revenues for such year;* PROVIDED, HOWEVER, *that a county, city, town or other municipal corporation which shall have reduced the total of its bonded indebtedness within a given year may, to meet its necessary expenses and debts, issue bonds to an amount not exceeding one-half of the reduction so made, without such vote. No election shall authorize any county, city, town or other municipal corporation to contract any debt, pledge its faith or loan its credit, unless the majority of the votes cast in favor of it are at least one-fourth of the number of votes cast in such county, city, town or other municipal corporation for the office of Governor of the State at the last gubernatorial election.*

SEC. 6. EXEMPTIONS. *Property belonging to the State, or to municipal corporations, shall be exempt from taxation. The General Assembly may ex-*

empt cemeteries and property held for educational, scientific, literary, charitable, or religious purposes. The General Assembly may also exempt, to a value not exceeding three hundred dollars, wearing apparel, household and kitchen furniture, mechanical and agricultural implements of mechanics and farmers, libraries and scientific instruments, or any other personal property.

SEC. 7. DISBURSEMENT OF PUBLIC FUNDS. *No money shall be drawn from the Treasury of the State, or of any county, city, town or other municipal corporation, but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.*

SEC. 8. USE OF SINKING FUNDS. *No part of any sinking fund of the State, or of any sub-division or municipality thereof, which shall have been created to retire specific bonds or indebtedness, shall be used for any other purpose until such bonds or indebtedness shall have been paid.*

I. STATE FISCAL POLICY

A. STATE TAXATION

THE CHANGES

The proposed Constitution would wipe out the following specific provisions respecting State taxation which are contained in the present Constitution:

1. The requirement that taxes be levied by "uniform rule" (which supposedly applies to all taxes, but has special significance with respect to the property tax).
2. The enumeration of the types of taxes to be levied; i. e., a property tax and taxes on trades, professions, franchises and incomes.
3. The provision that the income tax shall not exceed 6% on net incomes.
4. The requirement that, for income tax purposes, a minimum exemption of $1,000 must be allowed single persons, and a minimum of $2,000 allowed married men living with their wives and widows or widowers who have minor children.
5. A limitation on any property tax levied by the State, for purposes other than the six months school term, to 5 cents on each $100 of tax valuation.
6. An exemption from any State property tax for homes and mortgages thereon, to the extent of 50% of the value of the mortgage, up to $8,000, in cases in which home and mortgage are both listed for taxes in the same county.
7. The requirement that tax revenues be applied to no other purpose than the purpose specified when the tax is levied.

In place of these provisions the proposed Constitution would substitute the following:

1. A general provision that the power of taxation shall be exercised in a just and equitable manner, that it shall never be surrendered, suspended or contracted away, and that taxes shall be levied only for public purposes.
2. A provision authorizing the legislature, if it desires, to use the taxing power to encourage home ownership, the development of forestry and the conservation of all natural resources.

3. A provision authorizing the legislature, if it desires, to exempt from taxation, up to $1,000 each, all homes occupied by the owners.

In only two respects would there be no change:

1. The requirement that all acts levying taxes shall state the object to which the tax revenues are to be applied.
2. The provisions which: (a) require exemption from taxation of all State and municipal property; and (b) permit exemption of personal property up to $300 per taxpayer, and property held for educational, scientific, literary, charitable, religious or cemetery purposes.

THE PROBLEM

Should the constitution undertake partially to outline a State tax policy and partially to restrict the tax levying power of the legislature, or should these matters be left entirely within the discretion of the legislature?

The Present Law

The present Constitution contains only two provisions which are intended to apply to all forms of State taxation:

1. The requirement that all taxes be levied by uniform rule. (Though this requirement applies, in a general sense, to taxes other than the property tax, it has no such serious restrictive effect with respect to those taxes as it does with respect to the property tax. For instance, it does not prevent State license tax rates from varying in accordance with the size of the town in which the business is located or with the number of employees of the business; it does not prevent different bases of tax from being applied to different types of businesses; and it does not prevent one scale of income tax being levied against ordinary individual incomes, another scale against corporation incomes and still another scale against dividends from foreign corporations. In fact, the chief effect of the requirement with respect to taxes other than the property tax is to prevent such obvious cases of discrimination as, for instance, the levying of a higher tax against a nonresident than is levied against a resident for the same privileges. The Supreme Court has indicated that, in such cases, principles of natural law would operate to restrict the action of the legislature, even if the uniformity requirement were not in the Constitution. The chief potency of the uniformity requirement is, then, its effect on the property tax. In this aspect it will be subsequently discussed in connection with the general subject of the property tax.)
2. The requirement that every act levying a tax shall state the object to which the tax is to be applied, and that it shall be applied to no other purpose. (With respect to our major taxes, this provision has only very general application. Thus, in practice, all major State taxes except the gasoline and motor vehicle taxes are levied simply for the general fund. From this fund are taken the appropriations for schools, colleges, hospitals, offices, pensions and debt service. Under the budget system, all of these objects share pro rata, according to the size of the appropriation made for each; but no one of them has any direct claim on the revenues

produced by any specific tax levied for the general fund. The same is true of the gasoline and motor vehicle taxes which are paid into the highway fund. Appropriations are made from the highway fund for administration, maintenance, construction, highway debt service and transfer to the general fund; but no one of these objects may claim any specific part of the fund. Thus the removal of the requirement that tax revenues shall not be applied to any purpose other than that for which they are levied—a removal which would be accomplished by the proposed Constitution—would have no serious effect on our present system of handling State taxes and State appropriations.)

The present Constitution contains one other provision respecting State taxes which is general in character:

The taxes which may be levied by the legislature are enumerated; that is, a property tax and taxes on trades, professions, franchises and incomes. When this enumeration was incorporated into the Constitution those who drafted it probably contemplated that it would restrict the types of taxes which the legislature could levy. However, it has not resulted in such restriction. The State is now levying (in addition to levying all the taxes enumerated except the property tax) a gasoline tax, a motor vehicle license tax, a sales tax, an inheritance tax and numerous inspection and other "fees" which are, in reality, taxes levied for special services. Certainly some of these latter types of taxes, if not all of them, represent extensions of the tax levying power beyond the point contemplated by the men who framed this part of the present Constitution. Probably the most which can be said of the restrictive effect of this provision is that it sometimes clouds the path of a legislature seeking new sources of tax revenue, as those opposed to the levy of a proposed new tax argue that it would not be permitted by the Constitution and that, if it were declared unconstitutional, the legislature's entire tax program would be wrecked.

Coming to provisions which have to do with only one type of tax, the present Constitution contains no provision which limits the rate of the taxes on trades and professions, the franchise tax, the inheritance tax, the sales tax, the gasoline tax, the motor vehicle license tax, or the special "fees." Further, there are no restrictions on the manner in which these taxes may be levied except in so far as some casual restriction is effected by the uniformity rule. Of the major State taxes, then, there are specific restrictions only on the income tax and the property tax. With respect to the income tax, these restrictive provisions are:

1. A requirement that the rate of the tax may not exceed 6% on net incomes. (It took a constitutional amendment to give to the State the power to levy any income tax at all; and when that power was granted, this restriction on the rate of tax was attached to it. Under the present law, the maximum of 6% is being levied on all individual net incomes over $6,000 and on all corporate incomes taxable in the State. No attempt has

yet been made to evade the limitation, and it is doubtful if it can be evaded under the strict guise of an income tax. However, it is thought that by basing corporate franchise taxes on income, corporation incomes could be taxed at a higher rate than 6%. This possibility is seized upon by proponents of the proposed Constitution as meaning that the means of evading the present income tax limitation is already at hand, and as furnishing one more illustration of the impracticability of attempting to restrict the tax levying power of the legislature by specific provisions. By opponents of the change, on the other hand, the same possibility is used to illustrate the argument that there is opportunity for broadening the tax system under the present Constitution, and that therefore the complete elimination of all restrictive provisions is unnecessary. It will be noted that the premise of these opposing arguments is substantially the same, as anything which offers an opportunity for evading any present restriction must necessarily offer opportunity for broadening the State's tax system. The soundness of the opposing conclusions drawn from this premise must be left to the reader. Along the same line, it has been pointed out that revenues from the present individual income tax might be increased by taxing dividends on stock of domestic corporations. This, however, is not as important a matter as the possibilities with respect to corporation franchise taxes.)

2. A requirement that, in ascertaining taxable net incomes, an exemption of $1,000 must be allowed to single persons and an exemption of $2,000 must be allowed to married men living with their wives and to widows or widowers with minor children. (The fact that these exemptions are not allowed to be taken from dividends on stock in foreign corporations might be regarded as a practical evasion of this provision; but otherwise the present law provides for the exemptions.)

The provisions respecting the property tax are not, at the moment, of great importance with respect to State taxes, as the State is not now levying any property tax. In recent years the only property tax levied by the State was the 15 cent tax for schools during the years 1931-3. However, despite the present tendency to leave the property tax as a tax to be levied only by local governments, it cannot be said that the State has forever abandoned a property tax. As Constitutions are supposed to deal with future possibilities as well as present realities, the present limitations on a State property tax are still of importance from the constitutional standpoint. Those limitations are:

1. The tax must be levied by uniform rule. (This requirement of uniformity has always prevented the legislature from levying different rates of property tax on different types of property, either on the basis of the ability of the various types of property to pay taxes or for the purpose of encouraging projects which the legislature might consider as socially desirable. For instance, if the legislature believed that a note or a mortgage, because the interest on it is limited by law to 6%, should be taxed at a lower rate than a piece of commercial real estate, on which the rent

is not limited by law, it could not, under the present Constitution, put its belief into action by levying a lower rate of tax on the note than it levied on the commercial real estate. Similarly, if the legislature believed that it would be desirable to encourage reforestation projects by levying a lower rate of tax on reforested lands than it levied on other land, or by exempting some part of the reforested land altogether, it would find itself unable to do either because of the uniformity requirement. Thus it is generally said that the uniformity requirement prevents classification of property for taxation.

However, the legislature has not been prevented from arriving at a partial classification of property by indirect methods. Along this line it has: (a) exempted all stocks in domestic corporations, including building and loan shares; (b) exempted all stocks in foreign corporations the owners of which comply with the income tax law; (c) exempted municipal bonds, though the validity of this exemption is partially open to question; (d) permitted deduction of the taxpayers's debts from the tax value of his intangible property; (e) permitted deduction of the taxpayer's debts from the value of farm products produced by him and from the value of one year's supply of fertilizer, without permitting deduction of such debts from the value of other tangible property. The first four of these legislative provisions which indirectly result in a partial classification of property are based either on recognition of the fact that different types of property have not the same ability to pay or on recognition of the fact that intangible property, being easy to conceal, will not be listed for taxes at all unless given some concessions. Only the last-mentioned provision can be said to be grounded upon a legislative belief that it is socially desirable to favor some types of property. It could hardly be successfully contended that any of these provisions, or all of them taken together, represent anything approaching a complete or a scientific policy of property classification. It should also be pointed out that the concessions made to intangible property have not resulted in universal listing of intangibles, for much such property is still escaping taxation.

One other minor way by which some classification of property is indirectly secured is perhaps worth mentioning. It is the fact that county officials charged with the duty of valuing property for taxes sometimes ascribe to property a lower value than they otherwise would because they feel that the ownership of such property should not be discouraged. For instance, in many cases registered cattle are not valued proportionally higher than ordinary cattle, as the officials feel that the owner should not be penalized for attempting to maintain a high-class stock-raising or dairy farm which has distinct social values to the county. This is, however, at best but a haphazard and uncertain system.)

2. The State property tax rate cannot exceed 5 cents on each $100 of tax valuation for purposes other than the constitutional school term. For purposes of that school term there is no limit on such a tax. (It is the express exception for school taxes which allowed the legislature to levy the 15 cent State property tax during 1931-3. It is the same exception which prevents the 5 cent limitation on the State property tax rate from effecting any real limitation. When these provisions were incorporated into the Constitution they probably were regarded as some real limitation, as it

was not then contemplated that the State would take over the entire burden of maintaining the constitutional school term. Since the State has taken over that burden, however, if the legislature attempted to finance the entire six months' school term from a property tax it would be compelled to levy a tax rate so high it would probably abandon the plan. Thus, to finance the six months term at the present level of State maintenance would take a property tax of about 58 cents on each $100 of tax valuation. It is thus obvious that the exception for school taxes will, so long as the State carries the major school burden, offer an opportunity for the legislature to levy as high a State property tax as it is ever likely to care to levy, and, correspondingly, the 5 cent limitation of the property tax for other purposes is practically rendered of no effect.)

3. Homes and mortgages on them are exempted from property taxation, to the extent of 50% of the value of the mortgage, up to $8,000, when the home is occupied by its owner and both home and mortgage are listed for taxes in the same county. (As this exemption has been interpreted, it is extremely limited in its application. Mortgages are not listed for taxes in the county where the home is situated when they are owned by an individual who is a nonresident of that county, by a mortgage company or insurance company or any other corporation which does not have its principal office in that county, or by any bank, trust company or building and loan association, whether having its principal office in the county or not. Obviously, then, the great majority of cases in which homes are mortgaged are not entitled to the benefits of the exemption.)
4. All State and municipal property is exempt from taxation. (This includes the property of counties, townships and special districts as well as the property of cities and towns. However, as the provision is preserved in the proposed Constitution, extended comment is unnecessary.)
5. The legislature is permitted to exempt from taxation personal property of a taxpayer not exceeding $300 in value, and all property held for educational, scientific, literary, charitable, religious or cemetery purposes. (The legislature has permitted these exemptions, but as the proposed Constitution preserves the permission to allow them, extended comment is unnecessary.)

This completes the outline of the present law with respect to State taxes unless the poll tax be considered a State tax. The present Constitution permits the legislature to levy a poll tax not in excess of $2, but subsequently it refers to this tax as the "State and county" tax, and for years the tax has been regarded as a county rather than as a State tax. Consequently all discussion of it will be reserved until the general question of local taxation is discussed.

Essentials of the Proposed Provisions

There is but one definite restriction on the tax levying power in the proposed Constitution, and that is the requirement that all State and municipal property be exempt, which is also in the present Constitution. Other than this the only provisions ex-

pressly referring to taxes which might possibly be considered as restrictive are those which require that the taxing power be exercised in a "just and equitable manner," that it never be "surrendered, suspended or contracted away," and that taxes be levied only for "public purposes." These are so indefinite that they provide little hindrance to the exercise of complete discretion by the legislature.

As indicative of a policy favored but not required the proposed provisions would allow the legislature:

1. To use the taxing power to encourage home ownership, the development of forestry and the conservation of all natural resources.
2. To exempt all homes up to $1,000 each. (This provision may be restrictive rather than permissive in the sense that, had it not been included, the other provisions of the proposal regarding taxation would probably have permitted the legislature to exempt homes up to any amount.)
3. To exempt personal property up to $300 per taxpayer. (This is carried over from the present Constitution.)
4. To exempt property held for educational, scientific, literary, charitable, religious or cemetery purposes. (This, also, is carried over from the present Constitution.)

In addition to these provisions which specifically refer to the taxing power, there are two provisions in the proposal which, in the eyes of proponents of that document, have an indirect bearing on that power:

1. The provisions regarding State debts (subsequently to be discussed) are regarded as tending to decrease the tax load by gradually decreasing the amount of debt service taxes.
2. The veto power given to the Governor is regarded as a potential check on unwise use of the taxing power by the legislature.

The sum and substance of the proposal is that, as its sponsors intended it to do, it rests with the legislature full discretion to shape a State tax policy, to select the various sources of tax revenues and to fix the rates of various taxes. Of the specific provisions and restrictions in the present Constitution which it eliminates (pointed out in detail under the preceding heading, "The Present Law"), the most important are:

1. The limitation on the rate of income tax and on the exemptions to be allowed income taxpayers.
2. The uniformity rule as applied to the property tax.
3. The enumeration of the various types of taxes which the legislature may levy, which sometimes now gives the legislature cause for worry when seeking new taxes, for fear such new taxes will be unconstitutional.

By contrast the proposal would permit, though it would not require the legislature to abandon these restrictions, and would further permit the legislature:

1. To fix income tax rates and exemptions (as well as the rates of all other taxes) without any restrictions.
2. To classify property for taxation under any system it considers desirable.
3. To levy new types of taxes without fear of having such taxes declared invalid simply because not contemplated by the Constitution.

Criticisms of the Proposed Provisions

Those opposed to the proposed Constitution have urged the following arguments for rejecting its State taxation features:

1. It will leave the people without any guarantees against the unwise use of the taxing power by the legislature, as the requirement that taxes be levied only "in a just and equitable manner" and "for public purposes" affords less protection than that part of the Federal Constitution which prohibits the taking of property without due process of law—a prohibition which is extremely indefinite.
2. While there may be justification for loosening some of the restrictions in the present Constitution (as, for instance, by raising the maximum permissible income tax rate), there is no justification for removing the restrictions altogether.
3. The opportunities for broadening the State tax system under the present Constitution have not been exhausted. For instance, the system could be broadened by basing corporate franchise taxes on income.
4. Giving to the legislature unlimited discretion to classify property may very likely result in the legislature adopting a purely political classification which will, without attempting to be scientific or socially beneficial, merely favor types of property which the largest number of voters own or hope to own. For instance, it might lead to favoring farm real estate unduly over commercial and industrial property in the cities. Correspondingly, if the legislature comes to be dominated in the future by representatives from cities and towns, the object of this favoritism might be reversed. Further, even if the legislature exercises the power of classification in a more or less legitimate manner, on the basis of ability to pay, there is no assurance that it will result in getting on the tax books intangible property, not now listed; and if it fails in this respect it will result in placing an even greater burden on real estate than at present.

Suggested Advantages of the Proposed Provisions

Proponents of the proposed Constitution have urged the following arguments for adopting its State taxation features:

1. It will place the full responsibility for an adequate, modern system of State taxation where that responsibility ought to be—on the legislature, as directly representative of the people. It is pointed out that this would restore the policy of the Constitution prior to 1868.
2. It will remove the present restrictive provisions which sometimes cloud the

legislature's path in seeking new sources of tax revenue, which sometimes force the legislature to resort to obvious evasions, and which sometimes, as in the case of the limitation of the tax rate on individual incomes, prevent the legislature from taking action which it might otherwise be inclined to take. Proponents of the change believe that the evasions of the present limitations which either have been accomplished or are possible prevent those limitations from effecting their purpose, but yet result, because the limitations have not been scrapped completely, in a patchwork tax system rather than in a sound, modern system of taxation.

3. It will substitute, in the place of the present confusing restrictions, two potential restrictions which are much more logical and will be much more desirably effective: namely, the Governor's veto and the restrictions placed on the power to contract State debts.
4. It will permit the legislature to encourage, by proper adaption of the tax system, such socially desirable objectives as more wide-spread home ownership, the development of forestry and the conservation of natural resources.
5. It will permit the legislature to classify property according to its ability to pay, and such a classification will result in placing on the tax books much property which taxpayers now refuse to list. This increase in the value of property listed will offset any decrease in tax revenues caused by lowering tax rates on some types of property.
6. Competition from other states, in the form of lower tax rates, will act as a very practical limitation on the exercise of the taxing power by our legislature.
7. It will not result in unlimited and arbitrary taxation, as it does not disturb the thing which will always constitute the chief and most effective guarantee against arbitrary use of the taxing power by the legislature—the right of the people to elect new legislators every two years.

Quotations from Opponents and Proponents

"It cannot be denied that the proposed Constitution removes every definite and useful restriction on the power of taxation; enormously extends the field of taxation; permits, without a vote of the people, the levy of taxes for anything a court would hold to be a public purpose, to any extent, in any form, and without any limit, and by any system of classification, short of what might be declared a violation of the Fourteenth Amendment to the Federal Constitution . . .

"I think that the present limitation on the rate of taxation on incomes . . . might well be raised, but that the sky should not be the limit . . .

"My view is that the fact that the Congress has unlimited power of taxation is a further reason why the General Assembly of this State should not have it. Both governments operate in the same field and both may, and do, impose taxes on the same subjects. Therefore, it would seem to be the part of wisdom to impose some limitation on the exercise of this power by at least one of these sovereignties . . .

"Dr. Poe takes the position that he does not favor unlimited taxation. He assures us that under the proposed Constitution the General Assembly would not exceed reasonable limits on all forms of taxation, including that on polls, property, and incomes as well. Apparently, then, he and I agree that somewhere there should be reasonable limitations on taxation. The difference between us is that he thinks those limitations are purely legislative, while I think

that some reasonable limitation should be imposed in the Constitution itself. All of us are delighted to have Dr. Poe's assurance, but that would certainly carry greater weight if buttressed by a Constitutional declaration . . .

"I suggest to Dr. Poe that if he really desires to reach and tax excess profits of great corporations, he does not need a new Constitution. That can be done now by readjustments in our present system of franchise taxation. New York does it. California does it. It can be done here without injury to any business or industry in the State. And to do this would take from our tax system inequalities and injustices which now weigh heavily upon our smaller, weaker corporations. This is neither the time nor the place to go into the details of such readjustments, but I remind my friends on the other side that an effective plan of this nature has heretofore been proposed and advocated by me."

—Attorney-General Dennis G. Brummitt.

"The proposed new Constitution gives the General Assembly the unlimited power of taxation. It contains no restrictions on the exercise of this power by the legislature. That is an insuperable obstacle to my voting for it.

"I agree that a Constitution should contain a statement of fundamental principles, but a document can hardly be called a Constitution which does not contain such restrictions as will protect the people from the exercise of unrestrained power. This is especially true with respect to taxation. I feel very strongly that there should be reasonable restrictions in the Constitution itself upon the exercise of this power."

—Hon. R. A. Doughton.

"We start out with the unchallenged premise that Constitutions should concern themselves with general principles—principles that do not change with the ebb and flow of the tide of times—and not with arbitrary legislative functions that, if they fit conditions today will not fit conditions tomorrow. The details of fiscal policy; of how much we shall tax, or even how we shall tax, have no place in the almost unchangeable fundamental law of the State. These are questions that should rest in the sound discretion of legislative responsibility—a responsibility directly answerable at all times to the people of the State, and a responsibility that should be unhampered in its exercise with respect to the necessities of the hour . . .

"Our own State Constitution prior to the one adopted under imported leadership in 1868 contained no arbitrary or specific limitations or restrictions upon legislative power to tax, and we inherit no tradition of abuse of that unrestrained power. Is it strange that that should be the case? Would it not rather be strange if it were not the case, when the taxing power resided solely in the immediate representatives of the people, elected by and answerable to them for their conduct? . . .

"These arbitrary limitations [those adopted in 1868 or later] served no useful purpose, and on the contrary operated detrimentally to the public welfare in many particulars. To enumerate:

"1. They were an irresistible invitation to go the full limit authorized by the constitutional provision.

"2. The public was lulled into a sense of security by these constitutional limitations that experience showed was not justified.

"3. They led to resort to every form of subterfuge to circumvent the limitations, and these were universally successful.

"4. The limitations were in fact legislative in character, and were not adjustable to changing needs and conditions.

"5. They were almost universally responsible for cumulative op-

erating deficits in State and local units, constantly increasing the public debt and the overhead cost of government—necessitating a constantly increasing tax load to carry them.

"6. They resulted in a general policy of using the bond issue method of financing every conceivable kind of public improvement, some of which would and should have been provided on an economical and less expensive basis without bond issues if the tax limitations had permitted this to be done in a direct manner, instead of the indirect and more expensive and extravagant bond issue method . . .

"I have shown not only that every limitation in the Constitution of 1868 has been evaded, but that with respect to the new limitations as recent as 1920, some of them have been evaded and that the means is at hand for evading others as soon as the legislative mind finds it expedient to do so . . .

"I think it a pretty good indication that the legislative responsibility can be trusted to deal reasonably in these matters that for twelve years after these limitations [on income taxes] were incorporated in the Constitution the taxes levied under it were less than the constitutional authorization, and that the full rates authorized by the Constitution were not levied until the State broadened out into a policy that was not in contemplation when these limitations were adopted—a policy of full State responsibility for a State-wide eight months public school term. . . .

"The trend of this experience and of the experience in other states proclaims the truth that reasonable tax laws and reasonable tax burdens are not guaranteed or secured by arbitrary constitutional restrictions. They can and do become inconvenient. They can be and are the means of obstructing consistent structures of taxation to achieve the legislative aim. At best they give a false and untrustworthy sense of security, and tend to obscure the literal truth that the responsibility must rest upon the citizenship of the State, by constant vigilance, to obtain through their representatives in State, county and municipality, the blessings of reasonable tax laws and reasonable tax burdens. . . . Eternal vigilance is not only the price of liberty, but the price of reasonable taxation, and no constitutional device can be made to serve as a successful substitute for it."

Revenue Commissioner A. J. Maxwell.

"Present Article V has been and will continue to be an insuperable bar to a scientific tax plan in North Carolina until it is amended about as the new Constitution proposes to amend it. This is not merely the judgment of one citizen who has made a study of tax needs and methods; it is the judgment of the experienced Commissioner of Revenue and of many legislators past and present who have been called on to fashion the revenue bills of this State. Furthermore, it is the judgment of the most competent taxation authorities of the nation. . . . Refer to the report submitted to the National Tax Association in 1932 by the Association's committee of experts formed to prepare a model plan for State and local taxation. In its concluding paragraphs, the report stated that adoption of the committee's model plan or other tax plan suited to the conditions of a modern American State would be impossible in a state having the 'uniform, ad valorem rule' in its constitution."

State Senator Capus M. Waynick, Chairman of the Senate Committee on Constitutional Amendments

"There seems to have been a studious undercover effort to make it appear that the revised Constitution especially contemplates some classification of property that will result to the benefit of the wealthy and to the injury of the common people. I declare on the contrary that this revised Constitution prescribes classifications rather that

are specifically in the interest of the small home-owner and the small taxpayer. It looks to the ultimate exemption of $1,000 on the tax-exemption of every North Carolina home occupied by the owner. It takes off the present maximum limitation of 6 per cent on income taxes and makes it so that—at least in times of terrible depression such as we have just passed through—if there are any persons in North Carolina still making tremendously more than the rank and file of their fellow-citizens, $50,000, $100,000 or $500,000 a year, the State of North Carolina (while it will never ask for anything like the 55 per cent maximum tax levied by the United States Government) can ask for more than the 6 per cent to which the present Constitution now restricts us."

Dr. Clarence Poe, member of the Commission.

B. State Debt and Finance

THE CHANGES

Both the present and proposed Constitutions allow the legislature to borrow money, without a vote of the people and without specific limitation as to amount:

1. To refund outstanding bonds.
2. To supply a casual deficit.
3. To suppress insurrections or invasions.

In addition, the proposed Constitution would allow such borrowing, without a vote of the people:

4. To fund outstanding debts which are not bonded (not limited as to amount except as controlled by the amount of such debt outstanding.)
5. In anticipation of tax revenues (to the extent of 50% of the revenues anticipated during the current year).

The present Constitution limits borrowing, for purposes other than the first three above enumerated, to 7½% of the total tax valuation of property in the State. In place of this the proposed Constitution would substitute a provision which would allow borrowing, for purposes other than the five above enumerated, to two-thirds of the amount by which the State's outstanding debt was reduced during the preceding biennium. Either the present or the proposed limitation may be exceeded if the people vote approval.

Both Constitutions invalidate debts incurred in prosecuting the War between the States, in the emancipation of slaves, in connection with the reconstruction legislatures of 1868, 1869 and 1870, or in connection with the Constitutional Convention of 1868. Both Constitutions likewise prohibit use of the State's credit for private interests, though the proposal omits an exception for certain railroad projects, now obsolete, contained in the present Constitution.

There is no radical change in other provisions affecting State finance. Both documents prohibit the drawing of money from the State treasury except in accordance with appropriations, and both require annual publication of State receipts and expenditures. Both prohibit use of State sinking funds for any purpose except to pay the debt for which the fund was created, though the proposal (and probably, by implication, the present Constitution) will allow other use of any funds remaining after the particular debt has been paid. These general financial provisions are, in fact, so similar, that the discussion from this point on may be concentrated entirely on the different provisions with respect to limitation of the State debt.

THE PROBLEM

What limitation should be placed on the State debt?

The Present Law

Under the present Constitution the legislature can borrow, without a vote of the people:

1. To refund valid bonded debt, to an amount limited only by the amount of such debt outstanding.
2. To supply a casual deficit, without limit as to amount, except in so far as the power is limited by the practical difficulties of borrowing to supply deficits. (It is fairly well recognized that it is more difficult for a State, even though not in default on its debts, to borrow to supply a deficit than to borrow for any other purpose.)
3. To suppress insurrections and repel invasions.
4. For any other purpose, up to the point at which the State's net debt equals 7½% of the total assessed value of property in the State (as assessed for property tax purposes). The Constitution defines the State's "net debt" for this purpose as the amount of its total existing debt less the amount of sinking funds on hand and the par value of the State's stock in the Carolina Railroad Company and the Atlantic and North Carolina Railroad Company.

Any borrowing which does not fall within one of the above classifications must be authorized by a vote of the people of the State.

When the 7½% limitation was placed in the Constitution in 1924 the assessed value of property in the State was at or near its peak. Since that time very serious reductions have been made, the tendency toward reduction reaching its climax in the spring of 1933 when values were reduced nearly 25% from 1932 values which, themselves, were the result of drastic reductions. The result of this reduction is that the present net State debt nearly

equals or possibly exceeds 7½% of the present assessed valuation. Accordingly at present the legislature, without a vote of the people, can seriously increase the net State debt only by borrowing to suppress invasions or insurrections, the occurrence of which is not presently anticipated, or by borrowing to supply a deficit incurred.

On the other hand if, in the future, the assessed value of property in the State is materially increased or the net State debt is materially reduced, either or both of which are reasonably to be anticipated, the legislature could borrow enough for any public purpose, without a vote of the people, to return the debt to its present level or even to a materially higher level, without losing its power further to increase the debt by borrowing to supply deficits.

The Essentials of the Proposed Provisions

Under the proposed Constitution the legislature could borrow, without a vote of the people:

1. To fund or refund any valid existing debt, to an amount limited only by the amount of such debt outstanding. (Note that this extends to any type of debt the present privilege of refunding bonded debt.)
2. To supply a casual deficit. (As pointed out in connection with the identical present provision, this power is not limited as to amount except by the practical difficulties of borrowing to supply deficits.)
3. To suppress insurrections and repel invasions (as at present).
4. In anticipation of revenues due within the same fiscal year to the extent of 50% of such anticipated revenues. (This provision is not contained in the present Constitution. It is designed to supply what might be a confusing omission from the present document, but probably does not make a dangerous addition to the legislative borrowing power.)
5. For any other purpose, during any given biennium, to an amount equaling two-thirds of the amount by which the State's outstanding debt was reduced during the preceding biennium.

Any borrowing which does not fall within one of these classifications must be authorized by a vote of the people of the State.

It is obvious that the most important change effected by the proposal is the elimination of the 7½% limitation and the substitution of the limitation on new debts to two-thirds of the amount by which the State's debt was reduced during the preceding biennium. The sole dispute which has arisen over the debt provisions is with respect to the effect of that change.

Before passing to the arguments with respect to the effect of the change, it may be well to point out a question which is inherent in deciding how two-thirds of the amount by which "out-

standing indebtedness" was reduced during the preceding biennium is to be ascertained. The proposal does not specify how sinking fund payments are to be treated in ascertaining this amount. To illustrate the question which failure to mention sinking funds presents, we may start with the fact that each year $500,000 is paid into the highway bond sinking fund. This $1,000,000 in each biennium does not, literally, reduce the amount of State debt "outstanding." Therefore, if a court construed "outstanding" in a literal sense the $1,000,000 could not be included in ascertaining the amount by which the debt was reduced during a particular biennium; and this would mean that the legislature, in any borrowing it wished to do during the following biennium, could not take advantage of this $1,000,000, even though it served to reduce the State's net debt. However, in 1951 the highway sinking fund will reach the point at which it will care for all remaining highway bond maturities—approximately $28,000,000 maturing over a period of thirteen years. Each year, as money is taken from this sinking fund to retire bonds, the State's "outstanding" debt will be correspondingly reduced, even though no current taxes are being levied to meet these maturities. Yet the legislature may borrow two-thirds of the amount of these maturities. This would mean that, with respect to the highway fund debt, over the period from 1951 to 1964, starting with a net debt of zero, the legislature could finish with a net debt of approximately $18,000,000 by taking full advantage of the two-thirds provision which is supposedly designed to insure a gradual reduction of State debt. It may be that the court would construe "outstanding debt" in this connection as meaning "net debt," in which case the above possibility would be eliminated. However, the matter very likely does offer material for judicial construction.

Criticisms of the Proposed Provisions

Those opposed to the proposed Constitution have urged the following arguments against its debt limitation features as applied to the State debt:

1. Because the proposal will allow the legislature to borrow to fund or refund any existing debt it plainly does not guarantee that the State's debt will be reduced.
2. Because the proposal will also allow the legislature to borrow to supply a casual deficit it does not even guarantee that the State's debt will not be increased.
3. Because the proposal does not guarantee debt reduction, with consequent reduction in debt service taxes, and because it places no limitation on

taxes for current expenses, its debt provisions will not replace the specific limitations on the taxing power contained in the present Constitution.

Suggested Advantages of the Proposed Provisions

The proponents of the proposed Constitution have advanced the following arguments in favor of its debt limitation features as applied to the State debt:

1. The proposal plainly indicates a constitutional policy favoring a gradual reduction of the present State debt, with attendant reduction in debt service taxes, unless additional debt is authorized by the voters. Such a policy is favored because the ease with which debts have been incurred in the past and the high taxes they necessitate demonstrate the need for reduction of debt, in order to assure future taxpayers that their taxes will not remain high without a correspondingly high level of maintenance of governmental services.
2. The practical effect of the proposal will be to compel such a gradual reduction of the present debt; because, by virtue of the necessity of preserving the State's credit, by virtue of the difficulty in borrowing deficit money, by virtue of the operation of the executive budget, and by virtue of the check on the legislature provided in the Governor's veto power, it will be practically impossible for the legislature, except perhaps on rare occasions, to borrow enough by way of supplying a deficit to offset the amount paid on the State's debts during the same biennium.
3. The reduction in debt service taxes thus effected will not be offset by increase in taxes for current expenditures, the history of the State demonstrating that the chief cause of high taxes has always been, not ordinary current expenditures, but the necessity of repaying debts incurred to meet expenses which the authorities incurring the debts never expected to be met by current revenues. The proposed limitation on debts is, therefore, a more desirable limitation on the taxing power than the present specific limitations on that power.
4. The proposal eliminates the present 7½% limitation, which is unsound on two counts: (a) Basing the limitation on assessed valuation gives it a fluctuating basis; that is, under it, the State's debt, without being increased in amount, may pass from a position within the limitation to a position in excess of it, because of reductions in tax values made by county authorities; and, correspondingly, without being decreased in amount, the debt may pass from a position in excess of the limitation to a position within the limitation, because of increase in tax values made by county authorities. (b) Since the State is levying no property tax to be applied on its debts, the tax valuation of property in the State, as fixed for property tax purposes, furnishes no index of the State's debt-paying ability.
5. Once the State debt has been reduced, as in the course of normal events it will be, the legislature cannot, without a vote of the people, return the debt to the present level or to a level higher than the present, as it might under the present Constitution.
6. The proposal will never, as the present Constitution might strait-jacket the State's credit by preventing the legislature from borrowing any

money, other than to renew existing debts, for necessary expenses which did not expect to be met from current revenues.

Quotations from Opponents and Proponents

"That [the debt provisions of the proposal] is rather involved. What it all means we will not know until the Supreme Court tells us. But, the opportunity for incurring debt above the restrictions named lies in the fact that it may be done to 'supply a casual deficit' which in the last four year period, as we know, exceeded eighteen million dollars. I have come to the conclusion that the restriction on State debt here is not any better than in our present Constitution."

Attorney-General Dennis G. Brummitt.

"It [the proposal] provides an effective restraint and one that will be constantly operative . . . upon the most productive source of excessive tax burdens—the power to create debt. . . . This power can never be used without a vote of the people except within limitations that prevent an increase of the public debt and that require a gradual and consistent reduction of the public debt."

Revenue Commissioner A. J. Maxwell.

II. LOCAL FISCAL POLICY

A. Local Taxation

THE CHANGES

The proposal will wipe out the following provisions with respect to local taxation:

1. A requirement that all county, city, town and township taxes be uniform and *ad valorem.*
2. A requirement that local taxes be levied only for "necessary expenses."
3. A limitation of the county tax rate, for purposes other than schools, and except where exceeded by permission of the legislature, to 15 cents on each $100 of value.
4. An exemption from the property tax for homes and mortgages thereon, to the extent of 50% of the value of the mortgage, up to $8,000, in cases in which the home and mortgage are both listed for taxes in the same county.
5. A provision limiting to $2 the poll tax which the legislature may levy for the counties and limiting the city poll tax to $1.
6. A provision specifying those liable for poll tax as male residents between twenty-one and fifty only.
7. A requirement that the county poll tax be used for schools and support of the poor, with at least 75% of it going for schools.
8. A provision authorizing county commissioners and city and town governing bodies to exempt from the poll tax, in special cases, the poverty-stricken and the infirm.

In place of these provisions the proposed Constitution would substitute the following:

1. A general provision authorizing the legislature, by general laws, to provide a uniform system of taxation for the counties, cities, towns and other municipal corporations in the State.
2. An express prohibition against the exercise of the power of taxation by

any county, city, town or other municipal corporation except in accordance with such general laws.

3. A provision authorizing the legislature, if it desires, to use the taxing power to encourage home ownership, the development of forestry and the conservation of all natural resources.
4. A provision authorizing the legislature, if it desires, to exempt from taxation, up to $1,000 each, all homes occupied by the owners.

In only two respects would there be no change:

1. The provision requiring exemption from taxation of all State and municipal property.
2. The provision permitting exemption of personal property up to $300 per taxpayer, and property held for educational, scientific, literary, charitable, religious or cemetery purposes.

THE PROBLEM

Should the Constitution undertake partially to outline a tax policy for local governments and partially to restrict the tax levying power of local governments, or should these matters be left entirely in the discretion of the legislature?

The Present Law

The present Constitution contains only two provisions intended to apply generally to local taxes:

1. The requirement that local taxes be uniform and *ad valorem*. (The part of this which requires that local taxes be *ad valorem* does not, of course, prevent the levy of a poll tax, as the poll tax is expressly authorized by another section of the Constitution. Neither has it interfered with the levy of license taxes by counties, cities and towns, though these license taxes are not expressly authorized elsewhere by the Constitution. The part of the requirement which prescribes uniformity has not prevented levy of graduated license taxes, based on the amount of business done by the business or the number of its employees. Its chief effect is on the local property tax, which furnishes by far the major part of all local governmental revenues. Its effect on that tax is the same as the effect of the requirement that any State property tax be levied by uniform rule. This was discussed in some detail under that part of the discussion of State Taxation headed "The Present Law" (see page 52, paragraph 1), and the discussion will not be repeated here. It is sufficient here to repeat that, while it has not prevented a number of instances of indirect classification, it still prevents a frank and complete classification of property by the legislature, either on the basis of the ability of property to pay taxes or for the purpose of encouraging objects considered socially desirable by the legislature.)
2. The requirement that, without a vote of the people, taxes may be levied only for "necessary expenses." (It is impossible to define precisely what constitutes a "necessary expense" of a local government. As it has been construed, it covers an extremely broad range of objects, though it is perhaps not so broad as the phrase, "public purposes," which the proposed Constitution would substitute for it. It could hardly be maintained

that either phrase constitutes any definite restriction on the tax levying power. Our ideas with respect to both "necessary expenses" and "public purposes" change with our ideas regarding the services which local governments should render—ideas which, in these days, change rapidly.)

In addition to these general provisions, the present Constitution contains specific provisions with respect to both the property tax and the poll tax. The provisions specifically affecting the property tax (in addition to the requirement of uniformity already mentioned) are:

1. Homes and mortgages on them are exempted from property taxation to the extent of 50% of the value of the mortgage, up to $8,000, when the home is occupied by the owner and both home and mortgage are listed for taxes in the same county. (As explained in connection with State taxes, as this exemption has been interpreted it is very limited in its application. Mortgages are not listed for taxes in the county where the home is situated when they are owned by an individual who is a nonresident of that county, by a mortgage company or an insurance company or any other corporation which does not have its principal office in that county, or by any bank, trust company or building and loan association. Obviously, then, the great majority of cases in which homes are mortgaged are not entitled to this exemption.)
2. All State and municipal property is exempt from taxation. (This includes the property of counties, townships and special districts as well as the property of cities and towns. As the provision is preserved in the proposed Constitution, extended comment is unnecessary.)
3. The legislature is permitted to exempt from taxation personal property up to $300 per taxpayer, and all property held for educational, scientific, literary, charitable, religious or cemetery purposes. (The legislature has permitted these exemptions, but as the proposed Constitution preserves the privilege of allowing them, extended comment is unnecessary.)
4. The combined State and county property tax rate is limited to 15 cents on each $100 of valuation, and the State tax cannot amount to more than 5 cents of the 15 cents. The Constitution provides, however, that the limitation does not apply to taxes levied for the six months constitutional school term, and further provides that the legislature, by either general or special laws, may permit the counties to levy other taxes, in addition to the 15 cent rate, for special purposes. (As, for a number of years, the State has levied no property tax except for schools, the counties have been allowed the full 15 cent rate. Further, the 15 cent rate has come to be considered as applying only to ordinary current operating expenses. This attitude is based on the fact that, in addition to the express exception for schools, the legislature has provided an exception for almost all debt service taxes not levied to meet debts incurred by running operating deficits. It did this by enumerating a number of necessary expenses for which debts might be incurred, and taxes levied to pay the debts, without reference to the limitation. In addition, the legislature has, in a number of instances, granted permission to specific counties to levy a 5-cent, 10-cent or 15-cent rate, without reference to

the limitation, for such current operating expenses as the maintenance of courts and jails. It is thus important to note that, while the limitation actually limits county commissioners, in the absence of legislative permission to exceed it, it is no definite limitation upon the power of the legislature.)

The specific provisions of the present Constitution with respect to the poll tax are:

1. The county poll tax cannot exceed $2 and the city poll tax cannot exceed $1. (These limitations cannot be constitutionally exceeded except in certain special cases in which a higher tax is being levied as part of the debt service on bonds outstanding before the limitation was incorporated into the Constitution.)
2. The poll tax can be levied only on male residents between the ages of twenty-one and fifty.
3. Proceeds of the regular county poll tax must be applied to schools and support of the poor, with at least 75% of the revenue going to schools. (Under the present arrangement the poll tax revenue which is assigned to schools, along with fines, forfeitures and dog taxes, is set aside to maintain school buildings and pay such fixed charges as fire insurance on school buildings. If there is any surplus of these funds, they may be used to supplement the money provided by the State for the operation of the schools themselves. The spending of any part of the poll tax revenue allotted to support of the poor is left within the discretion of the county commissioners.)
4. The governing bodies of counties and cities are allowed, in special cases, to exempt the poverty-stricken and the infirm from payment of poll tax.

Before leaving the subject of the poll tax it may be pointed out that under our present system, contrary to fairly widespread impression, payment of poll tax is not a prerequisite to voting, even for male voters of poll tax age. Before leaving the subject of the present law dealing with local taxes it may also be pointed out that the dog tax is based on statute only, and does not rest upon any specific authority for such a tax in the Constitution.

The Essentials of the Proposed Provisions

There are in the proposed Constitution but two definite restrictions on the legislature's discretion with respect to local taxes.

1. All State and municipal property must be exempt from taxation. (Since this is also in the present Constitution it is not the subject of any controversy.)
2. The legislature must provide a uniform system of local taxation by general laws. ("Uniform system," as here used, has a meaning entirely different from that of the uniformity requirement of the present Constitution. The phrase, as here used, is apparently intended only to emphasize the requirement that local taxes be authorized only by general laws. It means, for instance, that while the legislature may be intended to provide a uniform *system* of taxation for all counties, it need not neces-

sarily levy the same rate of tax on all types of property in the counties. It would probably not prevent the legislature from providing alternative methods of taxation or from setting up somewhat different systems for towns of different sizes, though these matters will largely depend upon the construction placed upon the phrase by our Supreme Court. It does clearly manifest an intention to eliminate that part of the present system which allows the legislature to pass scores of purely local laws relating to tax rates, tax collection or tax foreclosure in some one county or town. Whether or not this manifest purpose is accomplished likewise depends upon the construction given this part of the proposal by the Supreme Court. At any rate, however, it is clear that county commissioners, under the proposal, will have no such direct Constitutional authority for levying taxes as they now have, for instance, to levy taxes to provide school buildings. They will have only such taxing power as the legislature allows them. The same is true of the governing bodies of cities, towns and districts; but this is also true under the present system.)

Other than these provisions the only provisions which might be considered as restricting the legislature's power with respect to local taxes are those which require that the taxing power (State as well as local) be exercised in a "just and equitable manner," that it never be "surrendered, suspended or contracted away," and that taxes be levied only for "public purposes." These are so indefinite as to provide little restraint upon the exercise of complete discretion by the legislature.

As pointed out in connection with State taxes, as indicative of a policy favored but not required, the proposal would allow the legislature:

1. To use the taxing power to encourage home ownership, the development of forestry and the conservation of all natural resources.
2. To exempt all homes occupied by the owners, up to $1,000 each.
3. To exempt personal property up to $300 per taxpayer (as at present).
4. To exempt property held for educational, scientific, literary, charitable, religious or cemetery purposes (as at present).

In addition to these provisions which specifically refer to local taxation, there are two provisions in the proposal which, in the eyes of proponents of that document, have an indirect bearing on the problem:

1. The provisions restricting the debts of local units (subsequently to be discussed) are regarded as tending to decrease the tax load by gradually decreasing the amount of debt service taxes.
2. The veto power given to the Governor is regarded as a potential check on unwise use of the taxing power by the legislature.

The sum and substance of the proposal is that, as its sponsors

intended it to do, it rests with the legislature full discretion to shape a local tax policy, to select the various local tax revenues and to prescribe the maximum rates for the various taxes. Of the present specific provisions and restrictions which this would wipe out the most important are:

1. The requirement that the property tax be levied by uniform rule.
2. The provisions limiting the amount, specifying those liable for, prescribing the application of the poll tax.
3. The provision that local taxes be *ad valorem*.
4. The 15-cent limitation on the county tax rate which restricts county commissioners but does not definitely restrict the legislature, and which has no constitutional counterpart with respect to cities and special districts.

By contrast, the proposal would permit, though it would not require the legislature, to abandon the restrictive phases of these provisions, and would further permit it:

1. To classify property under any system it considered desirable.
2. To permit the levy of any type of local taxes.
3. To fix the rates of poll taxes (as well as the rates of other local taxes, as at present).
4. To restrict or increase the power of county commissioners (as well as other local authorities as at present) in the levy of any taxes, including taxes for schools.

Criticisms of the Proposed Provisions

Those opposed to the proposed Constitution have urged the following arguments against its provisions with respect to local taxation:

1. It will leave the people without any guarantees against the unwise use of the taxing power by the legislature, as the general provisions of the proposal offer less protection than the Fourteenth Amendment to the Federal Constitution, which prohibits the taking of property without due process of law—a prohibition which is extremely indefinite.
2. It will permit unlimited poll taxes.
3. Giving to the legislature unlimited discretion to classify property may very likely result in the legislature adopting a purely political classification which will, without attempting to be scientific or socially beneficial, merely favor types of property which the largest number of voters own or hope to own. Further, even if the legislature exercises the power of classification, in a more or less legitimate manner, on the basis of ability to pay, there is no assurance that it will result in getting on the tax books the intangible property not now listed; and if it fails in this respect it will result in placing an even greater burden on real estate than at present.
4. Removal of the 15-cent limitation on county tax rates is obnoxious to the extent that it removes a desirable restriction on county commissioners and removes a statement which, while it does not absolutely restrict the

legislature, yet indicates a policy favored by the Constitution.

Suggested Advantages of the Proposed Provisions

Proponents of the proposal have urged the following arguments in favor of its provisions with respect to local taxes:

1. It will place the full responsibility for an adequate, modern system of local taxation, coordinated with the State taxation system, where that responsibility belongs—on the legislature as directly representative of the people. It is pointed out in this connection that this restores the policy of the Constitution prior to 1868.
2. It will permit the legislature, by proper adaptation of the tax system, to encourage such socially desirable objectives as more widespread home ownership and the conservation of natural resources.
3. It will enable the legislature to adopt, if it so desires, a scientific method of classification of property according to its ability to pay in place of the present evasive and indirect attempts to arrive at a partial classification. This will result in placing on the tax books much intangible property now escaping taxation; and the attendant increase in total taxable value will offset the loss in revenue caused by lowering rates on some types of property.
4. It will eliminate the present 15-cent limitation, which does not limit the legislature, which forces counties to handle all improvements by floating bond issues, and which merely serves to lull the taxpayers into a false sense of security.
5. It will not result in unlimited or even exceptionally high poll taxes, as, because poll taxpayers form the largest single class of taxpaying voters, there is little likelihood that the legislature will discriminate against them.
6. It will substitute for the present haphazard and confusing provisions two potential restrictions which are more logical and desirable: namely, the limitations on the power to contract local debts and the Governor's veto.
7. It will not disturb the thing which will always constitute the chief and most effective guarantee against arbitrary use of the taxing power—the power of the people to elect new legislators.

Quotations from Opponents and Proponents

The first, third and fourth paragraphs of the quotation from Attorney-General Brummitt, printed in connection with State taxes, and the entire quotations from Messrs. Maxwell, Waynick and Poe, printed at the same place, are equally applicable to the proposed provisions for local taxation. In addition, the following quotations are pertinent:

> "I think that the present limitation on . . . the property tax rate for county purposes might well be raised, but that the sky should not be the limit."
>
> —Attorney-General Dennis G. Brummitt.

> "At the time this limitation [the 15-cent limitation on the pro-

perty tax] was fixed it was deemed adequate for existing needs. But tax values immediately began to shrink and county expenses to increase. The result has been that a great many counties in the State have been driven to ask, 'what is the Constitution among friends, anyway,' and proceeded to levy rates clearly denied by the Constitution of the State. It is true that the largest taxpayers in some of these counties have asserted their constitutional rights and refused to pay more than the constitutional limit, and they have been permitted to settle their taxes on that 'compromise' basis, while Tom, Dick and Harry have paid the full taxes levied. Here, again, both experience and practical common sense demonstrate the utter impracticability of fixing in the Constitution of the State a tax levy that will fit the unknown conditions in the years ahead of us, and also the widely varying conditions in one hundred counties. Even if conditions remained static it is an utter impossibility to fix one rate of tax in the State Constitution that for one year will adjust itself to the widely varying needs in all the counties. The most reasonable figure that might be fixed would be more than enough in some counties, less than enough in others, and a reasonable figure in a relatively small number of counties. It must be plain that any attempt to regulate this matter by constitutional mandate is mischievous rather than wholesome, and that this becomes increasingly so when set up to guide unknown and changing conditions in the future."

—Revenue Commissioner A. J. Maxwell.

B. Local Debt and Finance

THE CHANGES

The present Constitution contains only three provisions with respect to local debts:

1. Such debts may be contracted, without a vote of the people, only for "necessary expenses."
2. The legislature is given the power to regulate the debt contracting power of cities and towns.
3. Local debts incurred in connection with the War between the States are declared invalid.

In place of these provisions, all of which are eliminated (the last because it is obsolete), the proposal would substitute the following:

1. A local unit may borrow, without a vote of the people:
   (a) To fund or refund valid existing debts.
   (b) To meet appropriations made for the current year, in anticipation of taxes and revenues for the same year.
   (c) For necessary expenses and debts, to the extent of 50% of the amount by which its bonded debt was reduced during the preceding year.
2. Other than in the three ways just mentioned, the local units can borrow money only by authority of a vote of the people.
3. No election can authorize such borrowing unless the favorable votes constitute at least one-fourth of the total number of votes cast in the same unit at the last election for Governor and constitute a majority of the votes cast in the debt election.

Other more minor changes include:

1. Extension, to include city and town as well as county and township treasuries, the present prohibition against drawing money from local treasuries except upon authority of law.
2. Extension, to make certain that it includes local as well as State sinking funds, of the present prohibition against use of sinking funds for any purpose other than to pay the debts for which the sinking funds were created.
3. A new provision requiring annual publication of local receipts and expenditures and requiring the legislature to provide for public notice of local budgets.

THE PROBLEM

What limitation should be placed on local debts?

The Present Law

As already pointed out, provisions of the present Constitution respecting local debts are only three:

1. Such debts may be contracted, without a vote of the people, only for "necessary expenses." (As pointed out in connection with local taxes, this phrase has been given a very broad meaning by the courts; and the legislature has enumerated a number of such expenses for which local units may borrow money without a vote of the people, unless such vote is specifically demanded by at least 15% of the electorate. As will subsequently appear, however, the limitation, such as it is, is partially preserved in the proposed Constitution.)
2. The legislature is given power to restrict the debt contracting power of cities and towns. (By statute the legislature has limited the net debt of a city or town to 8% of the tax valuation of property within it, but numerous exceptions for debts incurred for water, sewer, gas, electric light or power and other purposes allow the total debt greatly to exceed 8%. The legislature has also, by statute, attempted to limit county indebtedness, but the limitation is subject to some complicated exceptions and was passed after a large percentage of the present county debt had already been acquired. Further, the validity of certain of the limitations with respect to county school indebtedness is now before the Supreme Court.)
3. Local debts incurred in connection with the Civil War are invalidated. (This is omitted from the proposal as obsolete and no longer of any importance.)

Essentials of the Proposed Provisions

As pointed out, the proposal would allow local units to borrow, without a vote of the people:

1. To fund or refund a valid existing debt.
2. To meet appropriations made for the current year, in anticipation of taxes and revenues for the same year. (Under the present statutory system, local units already have this power to borrow on tax anticipation or revenue anticipation notes, subject to the approval of the Local Government Commission.)

3. For necessary expenses and debts, to the extent of 50% of the amount by which the unit's bonded debt was reduced during the preceding fiscal year. (The writer assumes that the governing year is the "preceding" fiscal year, though such is not expressly stated in the proposal. It will be noted that this is based only on reduction of bonded debt, and that any reduction in debts evidenced only by notes would not entitle the unit to borrow under this provision during the following year. Further, the 50% of the reduction which may be borrowed again may apparently be borrowed only by the issue of bonds and cannot be borrowed by way of short term notes. The provision is thus apparently designed to apply to long-term financing only. As in the case of the State debt provisions, the effect of putting money in a sinking fund is not specified.)

For purposes other than those already specified, no borrowing may be done without a vote of the people; and the approving vote must equal at least one-fourth of the total vote cast in the same unit at the last election for Governor.

The effect of these provisions is a very drastic curtailment on the power of local units to borrow money. It would certainly mean that no undertaking requiring serious capital outlay—even the construction of school buildings—could be financed by borrowing unless a substantial portion of the electorate consented. In fact, it would probably operate partially to prevent the legislature from placing on the counties, by statute, the present constitutional obligation on them to furnish school buildings necessary for the six months term. At least it would prevent any such legislative provision from being effective unless the buildings to be constructed could be financed from current revenues and 50% of the amount by which the county's bonded debt was reduced during the previous year.

It will also be noted, that, unlike the provisions with respect to the State debt, there is no specific permission to borrow to supply a deficit. Just what the effect of this omission will be is not altogether certain. It may mean that local units will be forced to do practically all of their current borrowing by way of tax anticipation notes.

Criticisms of the Proposed Provisions

No criticisms have yet been advanced against the proposed provisions with respect to local debts, except to the extent that criticism is implied in the fact that opponents of the proposal refuse to accept them as a substitute for the present provisions regarding local taxation. It may be that they will eventually be criticized as too drastic and as tending to shut off too com-

pletely the power of local units to borrow without a vote in times when borrowing will appear to be necessary and legitimate.

Suggested Advantages of the Proposal

Proponents of the proposed Constitution have advanced the following arguments in favor of its provisions respecting local debts:

1. They plainly indicate a constitutional policy favoring a gradual reduction of the present staggering local debt, with attendant reduction in debt service taxes, unless additional debt is authorized by the voters.
2. Their practical effect will be to compel such gradual reduction as the necessity of preserving the credit of the local units and legislative control over their budgets will operate in this direction as well as the specific limitations on the power to borrow.
3. The reduction thus effected will not be offset by increased levies for current expenditures, the history of the State demonstrating that the chief cause of high taxes has always been the necessity of repaying debts incurred to meet expenses never expected to be covered by current revenues. This proposed restriction on the borrowing power, therefore, when coupled with the lack of specific authority to borrow to meet deficits, provides a more effective and desirable limitation on the tax levying power than the present specific provisions with respect to the taxing power.
4. The requirement that the approving vote at any debt election must equal one-fourth of the total vote in the same unit at the last election for Governor will do away with the present unsatisfactory type of special registration elections for bond issues, and will insure that no debts are created upon supposed consent of the voters without positive acquiescence of a substantial percentage of the voters.

Art. VI. Suffrage and Eligibility to Office

Present Constitution

SECTION 1. WHO MAY VOTE. *Every male person born in the United States, and every male person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people in the State, except as herein otherwise provided.*

SEC. 2. QUALIFICATIONS OF VOTERS. *He shall reside in the State of North Carolina for one year, and in the precinct, ward, or other election district, in which he offers to vote four months next preceding election:* PROVIDED, *that removal from one precinct, ward, or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until four months after such removal. No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote, unless the said person shall be first restored to citizenry in the manner prescribed by law.*

SEC. 3. VOTERS TO BE REGISTERED. *Every person offering to vote shall be at the time a legally registered voter as herein prescribed and in the manner hereafter provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this article.*

SEC. 4. QUALIFICATION FOR REGISTRATION. *Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed:* PROVIDED, *he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration; and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article.*

SEC. 5. INDIVISIBLE PLAN; LEGISLATIVE INTENT. *That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together.*

Proposed Constitution

SECTION 1. WHO MAY VOTE. *Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this Article, and presents himself in person, shall be entitled to vote at any election by the people in the State,*

except as herein otherwise provided. Voting otherwise than in person by persons physically disabled or absent from the county in which they are entitled to vote may be provided by the General Assembly under properly restrictive regulations.

SEC. 2. QUALIFICATION OF VOTERS. *The voter shall have resided in the State of North Carolina for one year, and in the precinct, ward, or other election district, in which he offers to vote, four months next preceding election:* PROVIDED, *that removal from one precinct, ward, or other election district to another shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until four months after such removal. No person who has been convicted, or who has confessed his guilt in open court, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote, unless the said person shall have been first restored to citizenship in the manner prescribed by law.*

SEC. 3. VOTERS TO BE REGISTERED. *Every person offering to vote shall be at the time a legally registered voter as prescribed by law, and every person presenting himself for registration, unless already registered as provided by the laws of North Carolina, shall be able to read and write any section of this Constitution in the English language.*

THE CHANGE

Present ss. 1, 2, 3, 4 and 5 (stating that this is "an indivisible plan") are printed with proposed ss. 1, 2, and 3; no major changes in substance are made, except the new provision as to voting other than in person.

THE PROBLEM

To what extent should the Constitution provide for registration and voting, and set forth restrictions as to such?

The Present Law

The present Constitution provides that the following may vote:

1. Every 21 year old male person born or naturalized in the United States
   (a) who has resided in North Carolina one year and in the precinct, ward or election district four months (Voting privilege is not to be lost by moving from one precinct, ward or election district to another in the same county. Conviction or confession of any crime subjecting one to sentence in State's Prison forfeits privilege until citizenship is restored.)
   (b) when legally registered; i.e.
      a. when presenting himself for registration, he must be able to read and write any section of the Constitution in the English language, or
      b. When presenting himself to vote, must be eligible to vote under the "Grandfather Clause" permanent registration. (Such voter must have been entitled to vote, or a lineal descendant of one who was entitled to vote, in some state January 1, 1867, and must have registered in the permanent record, provided by the General Assembly, prior to December 1, 1908.)

To these constitutional provisions have been added numerous statutory amplifications, such as provisions for voting by women and the absentee ballot.

Conditions Suggesting a Revision

1. The absence of any constitutional principle or limitation with respect to absentee voting;
2. The presence in the Constitution of legislative details governing the "Grandfather" registration, as an unnecessary reference to a suffrage difficulty growing out of the unpleasant period of Reconstruction.

Essentials of the Proposal

The proposal differs from the present provision in the following respects: I. Absentee Voting. II. Disfranchisement for Crime. III. The "Grandfather Clause," each of which is discussed:

I. ABSENTEE VOTING

The General Assembly would be constitutionally authorized (as by statute only at present, C. S. 5960) to allow voting only by the following persons:

1. Those who "present themselves in person," or
2. Those not appearing in person, but who fall into one of the following classes:
   a. persons physically disabled (either within or outside of the county where entitled to vote);
   b. persons absent from the county where entitled to vote.

The present absentee ballot is purely statutory, under only implied constitutional authority, which has been upheld. The proposal would give the absentee ballot express constitutional status, by providing that it could at any time be further restricted or abolished but could never be extended beyond the present classes allowed the privilege of absentee voting. The proposal as it came from the Commission would have severely limited "absentee voting" [*it provided only for (a) persons disabled and (b) persons "absent from home in the service of the State or United States"*]; the General Assembly amended it, as now proposed, so as to prohibit an extension of such voting without restricting, or affecting, the present statutes. Naturally, those who think all absentee voting should be prohibited feel that this provision falls short of the ideal, but they recognize it as an improvement over the present Constitution, which makes no reference to absentee voting.

II. DISFRANCHISEMENT FOR CRIME

Present and proposed sections 2 are the same, except that the proposal omits "upon indictment in connection with confession of guilt." This omission makes the section consistent with pro-

posed ss. 9, 10, Art. I, dealing with "Charges of Crime." (See discussion.)

III. THE "GRANDFATHER CLAUSE"

Present ss. 3 and 4 set out the details of the "Clause," which provided for the permanent registration of 1908. Proposed section 3 provides that a person may vote:

When a legally registered voter "as prescribed by law; i.e.

a. When presenting himself for registration, he must be able to "read and write any section of this Constitution in the English language," or

b. When presenting himself to vote, must have been "already registered as provided by the laws of North Carolina."

Thus, the proposal omits the details of the "Grandfather Clause" as an unpleasant reminder of post-bellum difficulties, but retains the effect of the "Clause"—the life-long right to vote by those who registered permanently 26 years ago.

Quotations from Opponents and Proponents of the Suffrage Proposal

"In a recent representative assemblage, a prominent member of the North Carolina bar, for whom I have a very high regard gave voice to the following criticism:

'I am opposed to the proposed new Constitution for I understand it contains provisions authorizing voting by the Absentee Ballot.'

"This objection is shared by thousands of others, regardless of their political affiliations. They point out that much fraud and irregularities have been practiced at the elections on account of the absentee ballot; I do not contradict this statement, and personally I am opposed to the absentee ballot, not that the principle cannot be properly defended, but that privilege is so badly abused, that many voters of both parties are opposed to it.

"The old Constitution does not mention or recognize absentee voting, yet the Legislatures of 1917, 1919 and 1929, passed laws that permit it. C. S. 5960 provides that any elector who may be absent from the county in which he is entitled to vote, or who is physically unable to attend at the polling places in person, shall be allowed to vote by the absentee ballot. And this provision has been decided by the Supreme Court not to be unconstitutional. If the Legislatures under the present Constitution can make these provisions, they can likely make others enlarging these privileges that will not be held unconstitutional, so that it is now possible under the present constitution for a still larger percentage of the people to vote by the absentee ballot, if the Legislature so desires.

"To prevent the possible abuse of this privilege of voting by the absentee ballot, the Commission attempted to restrict these provisions. A sub-committee composed of myself and two other members of the Commission, to whom were assigned the duty to rewrite this section on suffrage, proposed a provision in the New Constitution requiring that every elector shall present himself *in person* at the polls in order to vote, but when this provision came before the Commission as a whole, this was changed as follows: 'Voting otherwise than in person by persons physically disabled or absent from home in the service of the State or of the United States, may be provided by the General Assembly under properly restrictive regulations.' In this form the New Constitution was presented to the Legislature, but it changed this to read:

'Voting otherwise than in person by persons physically disabled

or absent from the county in which they are entitled to vote, may be provided by the General Assembly under properly restrictive regulations.'

"It will be noted that this language is the same as is provided by section 5960 of the Consolidated Statutes, and now since this provision is incorporated in the New Constitution the Legislature is restricted and cannot pass any laws that will permit absentee voting except for the two causes stated, that is the voter must be physically disabled to attend in person and vote, or he must be absent from the county. The Legislature cannot enlarge upon this, whereas in the present Constitution there is no restriction, and the Legislature can enlarge this provision at will.

"While many, very many voters are opposed to all absentee voting, and on account of its abuse, I am personally opposed to any provision permitting it, yet, it must be admitted that the New Constitution is an improvement on the present Constitution in this particular, and any Legislature, if it sees fit, can repeal all statutory laws permitting it, as it is not mandatory in the new Constitution."

—Major George E. Butler, of the Commission.

Art. VII. Education

Introductory Note

The present, and the proposed, article on Education may each be divided, according to the subject matter, into the following three sub-topics:

I. Public Schools (Proposal ss. 1, 2, 3, 4, 7. Present ss. 1, 2, 3, 4, 5, 15.)

II. State Board of Education (Proposal ss. 5, 6. Present ss. 8, 9, 10, 11, 12, 13.)

III. Higher Education (Proposal ss. 8, 9. Present ss. 6, 7, 14.)

1. PUBLIC SCHOOLS

Present Constitution

ART. IX. SEC. 1. EDUCATION SHALL BE ENCOURAGED. *Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.*

SEC. 2. GENERAL ASSEMBLY SHALL PROVIDE FOR SCHOOLS; SEPARATION OF RACES. *The General Assembly, at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of, either race.*

SEC. 3. COUNTIES TO BE DIVIDED INTO DISTRICTS. *Each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.*

SEC. 4. WHAT PROPERTY DEVOTED TO EDUCATIONAL PURPOSES. *The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also all moneys, stocks, bonds, and other property now belonging to any State fund for purposes of education, also the net proceeds of all sales of the swamp lands belonging to the State, and all other grants, gifts, or devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury, and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever.*

SEC. 5. COUNTY SCHOOL FUND; PROVISO. *All moneys, stocks, bonds, and other property belonging to a county school fund; also the net proceeds from the sale of estrays; also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State; and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong*

to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State: PROVIDED, *that the amount collected in each county shall be annually reported to the Superintendent of Public Instruction.*

SEC. 15. CHILDREN MUST ATTEND SCHOOL. *The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability shall attend the public schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.*

Proposed Constitution

ART. VII. SEC. 1. EDUCATION ENCOURAGED. *Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.*

SEC. 2. UNIFORM STATE SYSTEM OF SCHOOLS. *The General Assembly shall provide by taxation, or otherwise, for a general and uniform system of free public schools in North Carolina, wherein equal opportunities, so far as practicable, shall be provided for all the children of the State, and shall enact such laws as it may deem necessary to carry out the provisions of this article.*

SEC. 3. SIX MONTHS MINIMUM TERM. *The State shall maintain a system of free public schools throughout the State for a term of at least six months in every year; and it shall be the duty of the General Assembly to provide adequate revenue for the support thereof. The General Assembly may provide for and maintain a longer school term.*

SEC. 4. PROPERTY DEVOTED TO EDUCATIONAL PURPOSES. *The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, and not otherwise appropriated by this State or the United States; also all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; also the net proceeds from the sale of estrays, and the clear proceeds of all penalties and forfeitures, and all fines collected in the several counties from any breach of the penal or military law of the State; also the net proceeds of all sales of the swamp lands belonging to the State and all other grants, gifts or devises that have been or may be made to the State and not otherwise appropriated by the State or by the terms of the grant, gift, or devise shall be paid into the State Treasury and, together with so much of the revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated and used for establishing and maintaining in this State a uniform system of free public schools, and for no other use or purpose whatsoever.*

SEC. 7. SCHOOL ATTENDANCE; SEPARATION OF RACES. *The General Assembly is empowered to enact laws fixing the age within which pupils may attend the public schools, regulating the conditions under which they may attend, and requiring attendance unless educated by other means than in the public schools. The children of the white and colored races shall be taught in separate schools, but equal opportunity of education shall be afforded all the children of the State regardless of race.*

THE CHANGES

Present, and proposed, sections 2 prescribe that the General

Assembly "provide by taxation and otherwise for a general and uniform system" of free public schools. Present section 2 (1) refers to all children between the ages of six and twenty-one years; (2) omits any reference to the power of the General Assembly to pass school laws; (3) provides for the separation of white and colored children without discrimination. Proposed section 2 (1) states no ages of children but requires "equal opportunities" for "all the children of the State"; (2) provides that the General Assembly "shall enact such laws as it may deem necessary to carry out the provisions" of the article; (3) does not refer to separation of the races, but s. 7 makes this provision, substituting "equal opportunity" for "no discrimination."

Present, and proposed, sections 3 provide for a term of "at least six months each year," but present section 3 requires the division of each county into districts and subjects the commissioners to indictment if they fail to comply with these requirements, while proposed section 3 merely authorizes the General Assembly to provide for a longer term and requires it to provide adequate revenue for the support of the six months term.

Present ss. 4 and 5 and proposed s. 4 make substantially the same provision for the application of fines, penalties, forfeitures, proceeds from estrays, etc. to the schools (now these, reported annually to the State Superintendent, go to the county school funds, but under the proposal they would go to the State Treasurer). Provision respecting money paid for "exemption from military duty," now obsolete, is omitted.

THE PROBLEM

What provision should be made for a uniform system of public schools?

The Present Law

The present constitutional provisions for a public school system are as follows:

1. The system must be general and uniform, maintained at least six months each year;
2. Tuition must be free for children from six to twenty-one years;
3. Separate schools must be provided for white and colored children without discrimination;
4. Counties must be divided into districts, at least one school to a district;
5. In addition to school funds appropriated, county school funds must secure
   (a) at least 75% of the poll tax—Art. V., s. 2 and
   (b) all fines, penalties, forfeitures, etc.—Art VII, s. 5.

Through statutory provisions, the constitutional system, which

is in reality the aggregate of the county systems, has been further unified:

1. The State Literary Fund (estimated at $540,000 as of Feb. 1934) has made loans to counties for school purposes over a period of years;
2. The State Equalization Fund to assist the county systems was administered by the State Board of Equalization from 1927, this Board exercising a limited control over county schools;
3. The State School Fund (approximately $16,000,000), voted in 1933 to be administered by the State School Commission, carried with it the assumption of the responsibility for the operation of the school systems and with it, to a large degree, State control through the State School Commission and Board of Education.

Conditions Suggesting the Revision

1. The partial collapse of weakened local units seeking during the recent period of reduced revenues to maintain the schools while carrying heavy debt-service burdens;
2. Larger units disregarding county lines becoming increasingly desirable in order to utilize fully school facilities and equipment, good highways and school-truck transportation having rendered largely obsolete the reasons for requiring districts laid out within county lines;
3. The distinct advantages of uniform rules, bulk-buying, etc. resulting from centralized control;
4. The need of a clear statement as to whether the responsibility for the operation of the schools is upon the State (as appears from the statutes) or still upon the counties (as indicated by the Constitution) thereby eliminating much confusion and doubt as to powers, duties, etc., especially of local school officials.

Essentials of the Proposed Public School Provisions

The proposed provisions follow the trend toward a unified state system, completing the transition from a series of county systems to a unified state system of public schools:

1. Responsibility for the schools is imposed upon the State, this responsibility to be discharged by the General Assembly, as the proper tax-levying body, and with this duty a large measure of control is granted the State through a re-organized State Board of Education;
2. Counties cease to be the units of school support or administration; school districts, which may disregard county lines, are substituted as administrative units;
3. The system must be general and uniform, maintained at least six months each year, tuition free for all children of the State, with separate schools and equal opportunities for white and colored children, and the school moneys heretofore going to the counties must be paid to the State Treasurer for school purposes.

(These changes follow the recommendations of the State Education Commission and the Special Report made for the Constitutional Commission by the Duke University Law School.)

Criticisms of the Proposed Provisions

1. A large, centrally-dominated State organization will take the place of the

relatively-simple, county school system with its local responsibility of officials.

2. The withdrawal of the tax-burden from local patrons will tend to weaken community interest in, and responsibility for, the schools.
3. The creation of a general, uniform system will necessitate a "leveling process" in which the progressive schools, which have set the pace, will be checked and retarded until the level of the remaining schools can be elevated; thus the most progressive communities will be the communities most severely penalized.
4. The direct responsibility for maintaining the schools is taken from the county, where citizens might enforce the duty by mandamus or indictment against county commissioners, but the proposal merely authorizes the General Assembly to provide funds and does not place the responsibility in such a way that citizens could compel the discharge of a specific duty by court action.

Suggested Advantages of the Proposal

1. Financial responsibility for the schools is taken from the local units, which still must carry their debt burdens, and placed squarely upon the State, which, through the General Assembly, has greater latitude in reaching revenue through taxation than has a local unit; the Governor (a) with the veto power and the power of calling special sessions could compel adequate revenue to be provided for the schools, and (b) through his budget powers could make emergency adjustments of disbursements to fit revenues. These factors combine to give the school system a sound, adequate, financial base sufficient to meet either a local shortage or a statewide emergency.
2. A unified organization with expert supervision will bring a more thorough, progressive and efficient administration than the separate, loosely-related county units could give, and re-districting without the artificial barrier of county lines, with effective transportation, will make possible more efficient utilization of all plants, equipment and teaching staffs; larger units replacing one hundred county units should reduce administrative overhead; uniform rules as to superintendents, use of local funds, preparation of budgets, etc., and bulk-buying of janitorial, transportational, and general school supplies should increase efficiency and reduce expenses.
3. The natural and constant interest of parents in school facilities for their children may be depended upon to prevent loss of interest in the schools, and this factor with the constitutional guarantee of "equal opportunities" and the accepted political maxim "the greatest good to the greatest number" offer every reasonable assurance of uniformly high educational facilities throughout the State.

Quotations from Opponents and Proponents

> "Our courts have spent fifty years in building up a construction of the provisions of our present Constitution dealing with our public school system. Whatever else may be said, I think it will be agreed now that the opinions of the court form a body of law upon which are founded the supreme rights of childhood to education at the hands of the State. And certainly it will require many years to determine what the reach and consequences of the proposed new Constitution may be on this subject.

"I state some conclusions I have reached as to what the new document means: It does not protect the State Literary Fund for the uses to which it is now devoted. When the General Assembly shall make an appropriation for the public schools, that appointive State Board could apportion and equalize that fund for schools as it saw fit without any control except such as the courts might exercise. That appointive State Board could be clothed with the power to appoint every school teacher in the State. It undoubtedly carries the temptation to politicalize the whole public school system.

"By all means the county should be preserved as the unit for schools, for by so doing the people would have some degree of local self-government in a most vital matter affecting their lives. This proposed Constitution destroys the county as the unit for the schools. It would take from the counties every source of school revenue they have heretofore had except that of property taxation." —Attorney-General Dennis G. Brummitt.

"The requirements for local districts, which were both necessary and justified in a dirt-road and horse-and-buggy age are neither justified or necessary in an era of automobiles and modern highways. A state system of public education has already been evolved by political and financial necessities and the proposed Constitution merely takes judicial notice of tendencies and reforms already approved by successive General Assemblies. By providing a greater equality in educational opportunity between poor counties and rich, urban and rural, the State is steadily approximating the ideal set up for it by its 'Educational Governor'—the 'equal right of every child to have the opportunity to burgeon out all there is within him'."

—Dr. Clarence Poe, of the Commission.

II. STATE BOARD OF EDUCATION

Present Constitution

ART. IX. SEC. 8. BOARD OF EDUCATION. *The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Instruction, and Attorney-General shall constitute a State Board of Education.*

SEC. 9. PRESIDENT AND SECRETARY. *The Governor shall be president and the Superintendent of Public Instruction shall be secretary of the Board of Education.*

SEC. 11. FIRST SESSION OF THE BOARD. *The first session of the Board of Education shall be held at the capital of the State within fifteen days after the organization of the State Government under this Constitution; the time of future meetings may be determined by the board.*

SEC. 12. QUORUM. *A majority of the board shall constitute a quorum for the transaction of business.*

SEC. 13. EXPENSES. *The contingent expenses of the board shall be provided by the General Assembly.*

SEC. 10. POWERS OF THE BOARD. *The Board of Education shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to free public schools and the educational fund of the State; but all acts, rules, and regulations of said board may be altered, amended, or repealed by the General Assembly, and when so altered, amended, or repealed, they shall not be reënacted by the board.*

Proposed Constitution

ART. VII, SEC, 5. STATE BOARD OF EDUCATION. *The general supervision and*

administration of the free public school system, and of the educational funds provided for the support thereof, shall be vested in a State Board of Education, to consist of seven members. The State Superintendent of Public Instruction shall be a member of said board, and its chairman and chief executive officer. The other members of the Board shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session. The first appointment under this section shall be three members for two years, and three members for four years, and thereafter all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the Governor for the unexpired term. The board shall elect a vice-chairman who shall preside in the absence of the chairman, and also shall elect a secretary, who need not be a member of the board. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the members of the board shall be provided by the General Assembly.

SEC. 6. POWERS AND DUTIES OF BOARD. *The State Board of Education shall have power to divide the State into a convenient number of school districts without regard to township or county lines; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the text books to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this Section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly.*

THE CHANGE

Present ss. 8, 9, 11, 12 and 13 and proposed s. 5 deal with the State Board of Education, which is now *ex officio*, but would become largely appointive (six of seven members). Present s. 10 and proposed s. 6 both empower the Board to make rules and regulations (subject to change by the General Assembly), but proposed s. 6 empowers the General Assembly more specifically. Present s. 15 and proposed s. 7 empower the General Assembly to regulate permissive and compulsory attendance of school children (the proposal omits the provision as to children from six-to-eighteen years.)

THE PROBLEM

What body is provided to administer the uniform state school system and how broad should be its powers and duties?

The Present Law

The present constitutional provision for an administrative body is:

An *ex-officio* State Board of Education composed of seven members, each heading state departments; only one, the State Superintendent, giving full

time to school administrative problems as Secretary to the Board.

To supplement this Board, the following additional statutory provisions have been made:

1. The State Board of Equalization, with limited control over schools resulting from control of distribution of the Equalization Fund (1927);
2. The State School Commission, with extensive powers of administrative control in administering the $16,000,000 school fund, replaced the Board of Equalization and assumed many of the duties and functions of the State Board of Education. It is composed of the Governor as Chairman, the Lieutenant-Governor, the State Treasurer, the State Superintendent of Public Instruction, eleven members appointed by the Governor from the eleven congressional districts, and a full-time secretary, not a member.

The administrative functions of the State Board and of the School Commission are distributed as follows:

The State Board of Education (Twenty-nine meetings during the past twelve months.)

(a) Adopts textbooks;
(b) Makes rules as to certification of teachers;
(c) Administers $540,000 State Literary Fund;
(d) Fills vacancies in county Boards of Education;
(e) Sells lands vested in the Board;
(f) With the Commission, fixes salary schedules.

State School Commission (Meets often, on call, frequently for days.)

(a) With the Board fixes salary schedules;
(b) Fixes districts and attendance areas;
(c) Determines where high schools shall be located;
(d) Creates city administrative units;
(e) Allocates teachers separately to elementary and high, white and colored, schools.
(f) Determines transportation routes or approves same;
(g) Operates busses, fixes drivers' salaries, passes on bus specifications;
(h) Supervises operation of plants, directs the purchase of fuel through the Division of Purchase and Contracts, fixes janitors' salaries, amount for janitorial supplies, etc.;
(i) Apportions $16,000,000 fund by objects of expenditure and by items within those objects;
(j) Approves all budgets for the expenditure of local funds;
(k) Approves the election of all school superintendents.

Conditions Suggesting the New Board

1. The present division of administrative responsibility between the State Board and the School Commission, with the statutory Commission discharging more important duties than the constitutional Board.
2. The need for the expertness, efficiency and saving which would come from a small body of full-time officials focusing their entire attention upon problems of school administration;
3. The shift of emphasis from the county to the state, both in taxation and

administration, has found local officials, machinery and districts, designed for the county school system, poorly adapted for the state system; the confusion and uncertainty due to the transition demands a single administrative body to interpret and clarify administrative principles and re-organize present school units.

Essentials of the Proposed Board

The proposed provision contemplates a single, responsible administrative Board:

1. To supervise and administer the State public school system;
2. To divide the State into districts without regard for county or township lines;
3. To regulate the grade, salary and qualifications of teachers;
4. To select and adopt text-books, and
5. To equalize school funds throughout the State.

(All these powers to be subject to regulation by the General Assembly.)

This State Board would be composed of:

1. .The elected State Superintendent, *ex officio* chairman and chief executive officer;
2. A Vice-Chairman, elected by the Board;
3. Six members, appointed by the Governor (with confirmation of the General Assembly), the first terms to be of irregular length; per diem compensation;
4. A secretary, who need not be a member of the Board.

Criticisms of the Proposed New Board

1. The Report of the State Educational Commission (1920) and that of the Brookings Institution (1930) recommended that all sections relating to the State Board or the State Superintendent be eliminated from the Constitution;
2. The General Assembly would continue to retain the power to destroy the rules and regulations set up by the Board for the efficient operation of the school system, thus subjecting the administrative machinery to legislative tampering;
3. The proposed State Board would be a body of school specialists rather than the group of practical experts in state government now constituting the State Board;
4. The new Board would place the Governor, through his appointees, in control of the schools and would increase the opportunity to "politicalize" the public school system.

Suggested Advantages of the Proposed New Board

1. It follows, essentially, the most recent recommendations of informed citizens of the state (N. C. Education Association—1932, Duke Law School study for the Commission—1932).
2. The General Assembly would retain the right to change rules of the State Board, otherwise it would be a law unto itself and no rules or officials should be completely beyond the control of the elected representatives of the people, especially in matters involving the education of the children of the State.

3. The Board would constitute a single administrative body, with a limited rule-making power, in charge of the schools. At present, both in number and importance the functions of the statutory School Commission are superior to those of the constitutional Board. The Governor appointed eleven of the members of the Commission (the other four are *ex officio*) at one time without the confirmation of any legislative body. The proposal remedies this, and (a) by empowering the General Assembly to refuse confirmation of appointees, and (b) authorizing the General Assembly to overthrow rules of the Board, sets up checks to prevent any attempt to "politicalize" the schools.
4. The head of the State school system is made chief executive officer of a small body of full-time, school-administrative specialists devoting themselves to the development of a general, uniform, State-wide school system, with power to re-organize districts and local governing bodies in keeping with a state system.

Quotations from Opponents and Proponents of the Revision

"Here, then, the short ballot would be applied to the control of our greatest social agency, the public schools. An opponent of the short ballot, who realizes the possibilities here involved, will find in this provision an insuperable obstacle to the support of the proposed new Constitution.

"Here is one of the greatest possible menaces to good government and public education in North Carolina. An appointive administration of our public school system, to punish those who disagree with the executive, who oppose his plans or his candidates, and to reward those who are subservient to his wishes and his will. It could be used to check that free expression upon educational policies by school men and teachers. It could be used to drag every teacher and employee in the public school system within the control of the political machine to be used in primaries and elections at the will of the dominant element in the major political party."

—Attorney-General Dennis G. Brummitt.

"Just as far as possible, control of our schools should be left in the local communities. The county should remain as the unit for school administration. The schools touch the life of our people very closely and very vitally. I would not want to see any further concentration of control of the schools, but believe that the right to have some choice with respect to them should be retained in the people of the local communities."

—Hon. R. A. Doughton.

"When the present Constitution made the state officers the Board of Education, the duties of that Board were neither arduous nor highly important from the administrative standpoint. Those duties could be performed more or less casually. Since the state has assumed the formerly delegated responsibility for public school administration, it has become impractical to expect that constitutional Board to perform the functions to be expected of the Board of control of public schools.

"In practice the state is doing now almost what the new Constitution would prescribe in the administration of the public schools. Believing that the constitutional Board could not perform the increasing duties in connection with school administration, the Board of Equalization was established by statute to be followed in 1933 by the State School Commission. To this body has been transferred

duties which the State Board of Education would perform were it a board chosen particularly for public school service.

"The result is that we have both the seven-member constitutional Board of Education and the fifteen-member State School Commission, of which eleven members are appointed by the Governor. Under the proposed Constitution we would have a specially chosen group of seven individuals in lieu of these two boards. Appointments would be staggered to keep experienced members always on the Board and under this plan of serial appointment biennially, no one Governor and General Assembly would choose all the appointive members after the naming of the first group.

"This appears to me to be a tried and safe method of public school control, reasonably safeguarded against improper, current, political manipulation and abuse, and certainly no radical adventure in view of the fact that we are operating now under a statutory plan quite similar to it."

—Senator Capus M. Waynick, Chairman of the Senate Committee on Constitutional Amendments.

"I beg to disagree absolutely with Mr. Brummitt . . . . In the very outset we should observe that the Constitutional Commission took judicial notice of these facts: The ever-growing magnitude, and complexity, of state school administration has resulted in the inability of state officials, serving *ex officio*, to carry out the duties of a real State Board of Education. Hence for all practical purposes in recent years, the real North Carolina State Board of Education has not been the *ex officio* group which the constitution makers of 1868 presumed would have time for all necessary duties. Rather, the gubernatorially-appointed State School Commission and State Board of Equalization have carried out the major part of the duties which the proposed Constitution would consolidate under the old name 'State Board of Education'."

—Dr. Clarence Poe, of the Commission.

III. HIGHER EDUCATION

Present Constitution

ART. IX, SEC. 6. ELECTION OF TRUSTEES, AND PROVISIONS FOR MAINTENANCE, OF THE UNIVERSITY. *The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises, and endowments thereof in any wise granted to or conferred upon the trustees of said University; and the General Assembly may make such provisions, laws, and regulations from time to time as may be necessary and expedient for the maintenance and management of said University.*

SEC. 7. BENEFITS OF THE UNIVERSITY. *The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also, that all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.*

SEC. 14. AGRICULTURAL DEPARTMENT. *As soon as practicable after the adoption of this Constitution the General Assembly shall establish and maintain, in connection with the University, a department of agriculture, of mechanics, of mining, and of normal instruction.*

Proposed Constitution

ART. VII, SEC. 8. HIGHER EDUCATION. *The General Assembly shall maintain a system of higher education in the State, to be comprised of the University*

and such other educational institutions as the General Assembly may deem wise. The General Assembly shall have power to provide for the election of trustees for the University and other educational institutions of the State, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof in anywise granted to or conferred upon the trustees of said institution; and the General Assembly may make such provisions, laws and regulations from time to time as may be necessary and expedient for the maintenance and management of said University and other institutions.

SEC. 9. BENEFITS OF STATE EDUCATIONAL INSTITUTIONS. *The General Assembly may provide that the benefits of the University and other educational institutions of the State, as far as practicable, be extended to the youth of the State free of expense for tuition; and all property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.*

THE CHANGE

Present s. 6 and proposed s. 8 provide for the election of University trustees and confer the same powers upon them, but the proposal (1) adds after "University," the words "and other educational institutions of the State," and (2) specifically contemplates maintenance of other institutions of higher learning as well as the University. Present s. 7 and proposed s. 9 provide that tuition to the youth of the State shall "as far as practicable" be free (the proposal adds after the University the words "and other educational institutions"), but in this connection the present section uses the word "shall," a command, the proposal "may," an authorization only. Present s. 14 providing for certain departments of the University, a legislative detail, is omitted from the proposal.

THE PROBLEM

What constitutional provision should be made with respect to State-supported higher education?

The Present Law

The Present Constitution:

1. Provides for and prescribes the powers of the University trustees;
2. Commands that University tuition be free "as far as practicable";
3. Provides that escheats, unclaimed dividends, or distributive shares of deceased persons go to the University;
4. Empowers the General Assembly to make all necessary laws relative to the University.

Other provisions for the University and all provisions for all other State-supported institutions of higher education are statutory.

Conditions Suggesting the Revision

During the sixty-six years of the present Constitution, under purely statutory sanction the State system of higher education has developed tremendously, but only the University has express approval and recognition in the organic law.

Essentials of the Higher Education Proposal

1. It would give the trustees of the other State, higher-educational institutions the same constitutional status as the University trustees;
2. It would give the other State institutions the benefit of the request for free tuition "as far as practicable" now enjoyed by the University alone;
3. It would state expressly the duty of the State "to maintain a system of higher education."

Suggested Advantages of Revision

The proposed provisions give State-supported, higher education express constitutional sanction and, further, place other State-supported institutions upon a parity with the University.

Art. VIII. Homesteads and Exemptions

Present Constitution

ART. X, SEC. 2. HOMESTEAD. *Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwellings and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes or for payment of obligations contracted for the purchase of said premises.*

SEC. 7. HUSBAND MAY INSURE HIS LIFE FOR THE BENEFIT OF WIFE AND CHILDREN. *The husband may insure his own life for the sole use and benefit of his wife and children, and in case of the death of the husband the amount thus insured shall be paid over to the wife and children, or to the guardian, if under age, for her or their own use, free from all the claims of the representatives of her husband, or any of his creditors... And the policy shall not be subject to claims of creditors of the insured during the life of the insured, if the insurance issued is for the sole use and benefit of the wife and/or children.*

SEC. 6. PROPERTY OF MARRIED WOMEN SECURED TO THEM. *The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised, and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried.*

Proposed Constitution

ART. VIII, SEC. 2. HOMESTEAD. *Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwellings and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars shall be exempt from sale under execution or other final process obtained on any debt and may be exempt from taxation in the discretion of the General Assembly. But no property shall be exempt from payment of obligations contracted for the purchase of said premises.*

SEC. 7. INSURANCE FOR BENEFIT OF WIFE AND CHILDREN EXEMPT. *Insurance on the life of a citizen of this State payable to his wife or minor children shall not be subjected to the claims of his creditors, either during his lifetime or after his death.*

SEC. 8. PROPERTY OF MARRIED WOMEN SECURED TO THEM. *The real and personal property of any woman in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such woman, and shall not be liable for any debts, obligations, or engagements of her husband.*

THE CHANGES

Proposed s. 2 preserves present s. 2, but adds that

1. The General Assembly may exempt the homestead from taxation, not exceeding the value of $1000, and
2. "No property shall be exempt from payment of obligations contracted for the purchase" of it.

Proposed s. 7 re-states concisely present s. 7 (as amended 1932).

Proposed s. 8 omits "and may be devised and bequeathed and with the written assent of the husband, conveyed by her as if she were unmarried," with reference to married women's property.

THE PROBLEM

What powers should be given the General Assembly with respect to homesteads, exemptions and the property of married women?

The Present Law—Homesteads

The Constitution now exempts the homestead, not exceeding $1000, from sale under execution, but prohibits any exemption of property from sale for taxes.

Conditions Suggesting $1000 Exemption from Taxes

1. The large number of small homes and farms lost by tax foreclosure during the recent period of curtailed incomes;
2. The express prohibition in the Constitution preventing even a consideration of its advisability as an exemption;
3. The present Constitution allows 50% deduction of the value of notes when a home is mortgaged for $8,000 or less (Art. V, s. 3), but this protection and assistance ceases when a person by thrift and self-denial succeeds in paying the debt off of his home.

Essentials of the $1000 Homestead Exemption Provision

The proposal continues the present $1000 homestead provision, but would also allow the General Assembly to exempt homesteads, not exceeding $1000, from taxes.

Criticisms of the Revision

1. All real estate should be required to bear its proportionate burden of taxes;
2. The small landowner takes greater pride and interest in a government in which he regularly invests; such an exemption would lessen his pride and interest in government producing indifference regarding matters governmental;
3. Such an exemption would merely increase the tax burden to be borne by other land or sources of revenue;
4. This exemption would increase the number of non-tax-paying voters and

decrease the number of tax-paying voters, thus tending to encourage an increase in public debt.

Suggested Advantages of Permitting the $1000 Exemption

1. The exemption would be a protection to the owners of small homes, who, in times of stress, have no reserve of funds with which to pay taxes;
2. It would be a protection to small homes from assessment out of proportion with that of large homes and business properties; further, taxes upon the small landowner are proportionately a heavier burden than they are upon persons with surplus wealth;
3. It would tend to develop individual character and a higher standard of citizenship, and would encourage persons of limited means (a) to invest in a home as a safeguard against becoming a charge upon relatives or society, and (b) to save and invest in a type of investment valuable alike to individuals and society;
4. There is a distinction between land owned as a home and land held for investment and no compelling reason requires them to be taxed alike; if such a distinction were recognized by this exemption the increase in tenants and non-landowning citizens could be checked, the increase in home-ownership bringing with it an individual interest in government;
5. This exemption would be in keeping with the present trend away from taxes on land and toward taxes upon income, yield and return.

PROPERTY OF MARRIED WOMEN

The portion of present s. 6 omitted from proposed s. 8 would continue as a statute until repealed. If repealed, a married woman could devise and bequeath her separate property as now, but could convey it without her husband's written assent. The present requirement of the husband's assent is regarded by some as an anachronistic heritage of the feudal system inconsistent with the present business and political status of women, but others regard it as a protection which many women, unacquainted with business, still need. The proposal would permit the General Assembly to allow wives to convey property without the husband's consent, a power which the General Assembly does not now have.

Art. IX. Public Welfare, Penal and Charitable Institutions, and Punishments

Present Constitution

ARTICLE XI

PUNISHMENTS, PENAL INSTITUTIONS, AND PUBLIC CHARITIES

SEC. 7. PROVISION FOR THE POOR AND ORPHANS. *Beneficent provisions for the poor, the unfortunate, and orphan being one of the first duties of a civilized and Christian State, the General Assembly shall, at its first session, appoint and define the duties of a Board of Public Charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement.*

SEC. 8. ORPHAN HOUSES. *There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more orphan houses, where destitute orphans may be cared for, educated, and taught some business or trade.*

SEC. 9. INEBRIATES AND IDIOTS. *It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates.*

SEC. 10. DEAF-MUTES, BLIND, AND INSANE. *The General Assembly may provide that the indigent deaf-mute, blind, and insane of the State shall be cared for at the charge of the State.*

SEC. 3. PENITENTIARY. *The General Assembly shall, at its first meeting, make provision for the erection and conduct of a State's Prison or penitentiary at some central and accessible point within the State.*

SEC. 4. HOUSES OF CORRECTION. *The General Assembly may provide for the erection of houses of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed.*

SEC. 5. HOUSES OF REFUGE. *A house or houses of refuge may be established whenever the public interests may require it, for the correction and instruction of other classes of offenders.*

SEC. 6. THE SEXES TO BE SEPARATED. *It shall be required, by competent legislation, that the structure and superintendence of penal institutions of the State, county jails, and city police prisons secure the health and comfort of the prisoners, and that male and female prisoners be never confined in the same room or cell.*

SEC. 1. PUNISHMENTS; CONVICT LABOR; PROVISO. *The following punishments only shall be known to the laws of this State, viz.: death, imprisonment with or without hard labor, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. The foregoing provision for imprisonment with hard labor shall be construed to authorize the employment of such convict labor on public works or highways, or other labor for public benefit, and the farming out thereof, where and in such manner as may be provided by law; but no convict shall be farmed out who has been sentenced on a charge of murder, manslaughter, rape, attempt to commit rape, or arson;* PROVIDED, *that no convict whose labor may be farmed out shall be punished for any failure of duty as a laborer, except by a responsible officer of the State; but the convicts so farmed*

out shall be at all times under the supervision and control, as to their government and discipline, of the penitentiary board or some officer of this State.

SEC. 2. DEATH PUNISHMENT. *The object of punishment being not only to satisfy justice, but also to reform the offender, and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.*

SEC. 11. SELF-SUPPORTING. *It shall be steadily kept in view by the Legislature and the Board of Public Charities that all penal and charitable institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.*

Proposed Constitution

ARTICLE IX

PUBLIC WELFARE, PENAL AND CHARITABLE INSTITUTIONS, AND PUNISHMENTS

SEC. 1. STATE BOARD OF PUBLIC WELFARE. *Constructive promotion of the social welfare or the common good being one of the first duties of a State, the General Assembly shall make provision for a Board of Public Welfare whose duties shall be the following, and such other duties as the General Assembly may prescribe: To study and promote the welfare of childhood, especially the welfare of the underprivileged child; to study and promote the public welfare especially as related to such subjects as unemployment, physical infirmities, mental health, poverty, vagrancy, housing, crime, marriage and divorce, public amusement, care and treatment of prisoners and other delinquents; to recommend needed social legislation; to visit and inspect all charitable and penal institutions with such powers of supervision as the General Assembly may prescribe, and to report annually to the Governor upon their condition with suggestions for their improvement.*

SEC. 2. PUBLIC, CHARITABLE, REFORMATORY OR PENAL INSTITUTIONS. *Such charitable, sanitary, benevolent, reformatory or penal institutions as the claims of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.*

SEC. 3. DEATH PUNISHMENT. *The object of punishment being not only to satisfy justice but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.*

SEC. 4. INSTITUTIONS SELF-SUPPORTING. *It shall be steadily kept in view by the General Assembly, the State Board of Public Welfare and the governing boards of all penal and charitable institutions that such institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.*

THE CHANGE

Proposed s. 1 provides for a Board of Public Welfare and catalogues its duties; present s. 7 in more sentimental terms makes

similar provision for a Board of Public Charities. Proposed s. 2 provides for the operation of "charitable, sanitary, benevolent, reformatory or penal" institutions required by "humanity . . . and the public good"; present ss. 1, 3, 4, 5, 6, 8, 9, and 10 give the present provisions for these institutions and lists the types of punishment (with restrictions on convict labor). The remaining sections of the two Constitutions are substantially equivalent, as printed above.

THE PROBLEM

What constitutional provision should be made with respect to public welfare, penal and charitable institutions, and punishments?

The Present Law

The present Constitution provided for a Board of Public Charities with such duties specified as the socio-economic and penal knowledge of the day possessed. The advancing social sciences long ago demanded an expansion of this program into such fields as unemployment, mental health, marriage and divorce, care and treatment of prisoners, and similar sociological and penological problems, depending upon statutory approval, departmental leadership and public approval to sustain the program. During the past sixty-six years the decided shift from an agricultural to an industrial basis, the astounding growth of highway, school and institutional systems, the new vista of social, economic and technological problems—all have conspired to change the entire approach, scope and treatment of practical sociology. These problems, compelling and acute, paid little heed to the categories of a Reconstruction Constitution, but General Assemblies encouraged by the social philosophies of recent Federal Administrations have, to a limited extent, through statutory enactments, enabled this Board to search for and employ enlightened answers to such social problems.

Conditions Suggesting a Revision

1. The Constitution should "respond . . . adequately to the modern needs of a progressive commonwealth" and in doing so should express a modern, scientific conception of public welfare and the duty of the state to its citizens, in the light of the knowledge and experience accumulated during the past sixty-six years.

Essentials of the Proposed Revision

The proposal:

(a) omits all specific provisions as to the classes of, and manner of caring for, unfortunates leaving a flexible power in the General Assembly to make provisions consistent with advancing scientific knowledge;

(b) except for the power given the General Assembly to abolish, but not extend, capital punishment, all specific reference to types and classifications are omitted, thus leaving the General Assembly free to evolve, with the assistance of the Board of Public Welfare, an effective penological system and scale of punishments;

(c) empowers the General Assembly to provide for the election or appointment of the Board, its number, officers, administration, powers and duties; and

(d) gives express sanction to the Board's research to discover and ameliorate or eliminate the causes of unsatisfactory socio-economic conditions, placing emphasis upon prevention and cure of social evils rather than the maintenance and care of victims.

Criticisms of the Revision

1. The proposal embodies the current conception of the relation of the state to the individual, and to this extent will bind future generations to present ideas.
2. The proposal sacrificed certainty in seeking flexibility, by setting out general ideas with no restrictions; i.e. State institutions and punishments.
3. It indicates a further tendency to centralize power in the General Assembly and encourage the domination of state institutions, welfare and charity activities, and even the matter of punishments, by the State Board of Public Welfare.

Suggested Advantages of the Revision

1. It gives a clear statement of the modern conception of the State's duty to its unfortunate members, not as charity, but as the discharge of a social obligation which the self-interest of society must recognize in protecting and advancing itself;
2. It gives to the General Assembly flexible powers to make such provision for the Board and to enact such social regulations as the shifting panorama of an age of change shall make advisable;
3. Its provisions are in keeping with the trend and needs of our times and a definite advance from the partially antiquated and inadequate present provisions; while striking a modern and constructive note, the provision (s. 1) "and such other duties as the General Assembly may provide" would prevent its conceptions from becoming a strait-jacket when present methods and ideas are outmoded.

Art. XI. Agriculture, Industry and Miscellaneous Provisions

Present Constitution

MISCELLANEOUS

ART. III. SEC. 17. DEPARTMENT OF AGRICULTURE, IMMIGRATION, AND STATISTICS. *The General Assembly shall establish a Department of Agriculture, Immigration, and Statistics, under such regulations as may best promote the agricultural interests of the State, and shall enact laws for the adequate protection and encouragement of sheep husbandry.*

ART. XIV. SEC. 4. MECHANIC'S LIEN. *The General Assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lien on the subject-matter of their labor.*

SEC. 6. SEAT OF GOVERNMENT. *The seat of government in this State shall remain at the city of Raleigh.*

SEC. 34. STATE BOUNDARIES. *(Bill of Rights, Art. I.)*

SEC. 7. HOLDING OFFICE. *No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either House of the General Assembly:* PROVIDED, *that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes.*

SEC. 8. INTERMARRIAGE OF WHITES AND NEGROES PROHIBITED. *All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation, inclusive, are hereby forever prohibited.*

ARTICLE VIII

CORPORATIONS OTHER THAN MUNICIPAL

SEC. 1. CORPORATIONS UNDER GENERAL LAWS. *No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations, and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the General Assembly may at any time by special act repeal the charter of any corporation.*

SEC. 2. DEBTS OF CORPORATIONS, HOW SECURED. *Dues from corporations shall be secured by such individual liabilities of the corporations, and other means, as may be prescribed by law.*

SEC. 3. WHAT CORPORATIONS SHALL INCLUDE. *The term "Corporation" as used in this article shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. And all corporations shall*

have the right to sue, and shall be subject to be sued, in all courts in like cases as natural persons.

ARTICLE XIV

MISCELLANEOUS

SEC. 1. INDICTMENTS. *All indictments which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon in the proper courts, but no punishment shall be inflicted which is forbidden by this Constitution.*

SEC. 2. PENALTY FOR FIGHTING DUEL. *No person who shall hereafter fight a duel, or assist in the same as a second, or send, accept, or knowingly carry a challenge therefor, or agree to go out of the State to fight a duel, shall hold any office in this State.*

SEC. 3. DRAWING MONEY. *No money shall be drawn from the Treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.*

SEC. 5. GOVERNOR TO MAKE APPOINTMENTS. *In the absence of any contrary provision, all officers of this State, whether heretofore elected or appointed by the Governor, shall hold their positions only until other appointments are made by the Governor, or, if the officers are elective, until their successors shall have been chosen and duly qualified according to the provisions of this Constitution.*

Proposed Constitution

ARTICLE XI

AGRICULTURE, INDUSTRY AND MISCELLANEOUS PROVISIONS

SEC. 1. AGRICULTURE, INDUSTRY AND NATURAL RESOURCES; INDUSTRIAL RELATIONS; BANK SUPERVISION. *Proper agencies of government shall be maintained at all times for promoting the agricultural and industrial development of the State. In formulating legislation, constant objects of State policy shall include the conservation of natural resources such as soils, minerals, water power and fisheries, the encouragement of proper forestry policies, the maintenance of soil fertility, the preservation of natural or scenic beauty, and the promotion of thrift and home ownership. The General Assembly shall have power to adjust the taxing system so as to encourage home ownership, the development of forestry and the conservation of all natural resources. The State shall endeavor to serve the interests of both employers and employees by encouraging the peaceful adjustment of industrial disputes. The General Assembly shall provide proper regulation for the protection of industrial workers, especially women and children, and shall also safeguard the earnings of citizens by adequate protective legislation and supervision of banks and other financial institutions or investment agencies.*

SEC. 2. MECHANIC'S LIEN. *The General Assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lien on the subject-matter of their labor.*

SEC. 3. SEAT OF GOVERNMENT AND BOUNDARIES OF STATE. *The seat of government in this State shall be at the City of Raleigh, and the limits and boundaries of the State shall remain as they now are.*

SEC. 4. DUAL OFFICE-HOLDING FORBIDDEN. *No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly;* PROVIDED, *that nothing herein contained shall extend to officers in the militia, justices of the peace, school committeemen, notaries public, commissioners and trustees of public charities and institutions, or commissioners for special purposes.*

SEC. 5. INTERMARRIAGE OF WHITES AND NEGROES PROHIBITED. *All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation, inclusive, are hereby forever prohibited.*

SEC. 6. CORPORATION UNDER GENERAL LAWS. *No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations, and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the General Assembly may at any time by special act repeal the charter of any corporation.*

ART. V. SEC. 7. DISBURSEMENT OF PUBLIC FUNDS. *No money shall be drawn from the Treasury of the State, or of any county, city, town or other municipal corporation, but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.*

ART. III. SEC. 10. OFFICERS FOR WHOSE APPOINTMENT PROVISION NOT OTHERWISE MADE. *The Governor shall nominate and, by and with the advice and consent of a majority of the Senators-elect, appoint all officers whose offices are established by this Constitution and for whose appointment provision is not otherwise made.*

THE CHANGES

Proposed s. 1 (partially present s. 17, Art. III) requires agencies for promoting agricultural and industrial development, and sets forth certain "constant objects of State policy . . . in formulating legislation." Proposed ss. 2, 3, and 5 preserve present ss. 4, 6, (Art. I, s. 34), and 8. Proposed 4 preserves present s. 7 prohibiting dual office-holding but exempts also school committeemen, notaries public, and trustees of public charities and institutions. Proposed s. 6 is identical with present s. 1, Art. III, requiring general laws for governing corporations. Proposed s. 7, Art. V and s. 10, Art. III, retain present ss. 3, 5, Art. XIV with changes discussed. Present ss. 2 and 3, Art. VIII, both legislative in nature, are omitted.

THE PROBLEM

In what manner should the Constitution recognize the duty of the state government to safeguard the public welfare by encouraging agricultural and industrial development and providing as to similar economic matters?

The Present Law

These now-vital problems are not mentioned in the present Constitution, except that a State Department of Agriculture is required.

Conditions Suggesting These Provisions

An industrialized and commercialized age develops economic problems having important, general, social and aesthetic aspects which the current, highly-socialized political philosophy regards as most important.

Essentials of these Proposals

These provisions are not mandatory, but place before the General Assemblies six general duties with respect to matters socio-economic:

1. *Government to Promote Agricultural and Industrial Progress*
   "Proper agencies of government shall be maintained at all times for promoting the agricultural and industrial development of the State."
2. *New Objects of State Government*
   "In formulating legislation, constant objects of State policy shall include:
   (a) the conservation of natural resources such as soils, minerals, water power and fisheries,
   (b) the encouragement of proper forestry policies,
   (c) the maintenance of soil fertility,
   (d) the preservation of natural or scenic beauty, and
   (e) the promotion of thrift and home ownership."
3. *Taxing Power May Be Used*
   "The General Assembly shall have power to adjust the taxing system so as to encourage home ownership, the development of forestry, and the conservation of all natural resources."
4. *Settling Industrial Disputes*
   "The State shall endeavor to serve the interests of both employers and employees by encouraging the peaceful adjustment of industrial disputes."
5. *Protecting Industrial Workers*
   "The General Assembly shall provide proper regulation for the protection of industrial workers, especially women and children."
6. *Safeguarding Depositors and Investors*
   The General Assembly "shall also safeguard the earnings of citizens by adequate protective legislation and supervision of banks and other financial institutions or investment agencies."

Among the other provisions are the following:

Dual Office-holding

This provision extends the exemptions, allowing the same exemption to notaries as is now allowed justices of the peace, the same to school committeemen now allowed commissioners of public charities or for special purposes, and the term "trustee" is stated with "commissioner" in connection with public charities and institutions, since these terms when so used are generally treated as being interchangeable.

Disbursement of Public Funds

Present s. 3 uses the vague term "Treasury," but proposed s. 7, Art. V, states expressly "Treasury of the State" and extends the requirement of lawful appropriations before expenditure to "any county, city, town or other municipal corporation." This makes the same requirement of the publication annually of receipts and expenditures equally applicable to state and local governmental units. Thus, an annual accounting of public funds is made mandatory.

General Appointive Power of the Governor

Present s. 5, Art. XIV, empowered the Governor to make the necessary appointments to the offices provided for by the present Constitution; proposed s. 10, Art. III, empowers the Governor "with the advice and consent of a majority (26) of the Senators-elect" to appoint all officers under the proposed Constitution, for whose appointment no other provision is made. Whether the senatorial approval must be oral or written, and whether the same provision applies after the Senate has convened is left to conjecture until clarified by judicial interpretations or statutory enactment, or both.

Obsolete or Legislative Sections Omitted

Present ss. 2, 3, Art. VIII, and 3, 5, Art. XIV, respectively, dealing with security for corporate debts, the definition of "corporations," indictments before the Constitution became effective, and the penalty for duels, are omitted as being obsolete or purely legislative, or both.

Criticisms and Advantages of these Proposed Provisions

These provisions covering a wide range of subjects (1) clarify and modernize partially-obsolete provisions and eliminate unnecessary or obsolete sections, and (2) recognize a number of

vital, modern problems, which are merely called to the attention of the General Assembly. Since most of these are couched as general mandates as to state policy in harmony with modern trends of government and public opinion, no serious objections to them have been urged.

Grouped as a class, these provisions reflect a more modern view of the functions of government, and may well be relied upon by future legislators seeking specific legislation consonent with these provisions.

Art. XII. Amendments, Existing Laws and Offices

Present Constitution

ARTICLE XIII

Amendments

Section 1. Convention, How Called. *No convention of the people of this State shall ever be called by the General Assembly, unless by the concurrence of two-thirds of all of the members of each House of the General Assembly, and except the proposition, Convention or No Convention, be first submitted to the qualified voters of the whole State, at the next general election, in a manner to be prescribed by law. And should a majority of the votes be cast in favor of said convention, it shall assemble on such day as may be prescribed by the General Assembly.*

Sec. 2. How the Constitution may be Altered. *No part of the Constitution of this State shall be altered unless a bill to alter the same shall have been agreed to by three-fifths of each House of the General Assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole State, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the Constitution of this State.*

Proposed Constitution

ARTICLE XII

Amendments, Existing Laws and Offices

Section 1. Constitutional Convention. *No convention of the people of this State shall ever be called by the General Assembly, unless by the concurrence of two-thirds of all of the members of each House of the General Assembly, and except the proposition, Convention or No Convention, be first submitted to the qualified voters of the whole State in a manner to be prescribed by law. And should a majority of the votes cast be in favor of said convention, it shall assemble on such day as may be prescribed by the General Assembly. A convention, when called, shall be limited to 120 delegates and such delegates shall be elected upon basis of the membership of the House of Representatives.*

Sec. 2. Amendment of the Constitution. *No part of the Constitution of this State shall be altered unless a bill to alter the same shall have been agreed to by three-fifths of each House of the General Assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole State, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the Constitution of this State.*

Sec. 3. Laws to Remain in Force. *The laws of North Carolina, not repugnant to this Constitution or the Constitution and laws of the United States, shall be and remain in force until lawfully altered. The provisions of the prior Constitution and its amendments not embodied herein, shall, except as inconsistent with the provisions of this Constitution, remain in force as statutory law subject to the power of the General Assembly to repeal or modify any or all of them.*

SEC. 4. THIS CONSTITUTION NOT TO VACATE EXISTING OFFICES. *The changes made in the prior Constitution of North Carolina by this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the said Constitution and the laws of the State made in pursuance thereof.*

SEC. 2. *That this amendment shall be submitted to the qualified voters of the State at the next general election.*

SEC. 3. *That the electors favoring the adoption of this amendment shall vote a ballot on which shall be written or printed the words, "For Amendment Amending the Preamble and the Several Articles of the Constitution.", and those opposed shall vote a ballot on which shall be written or printed the words, "Against Amendment Amending the Preamble and the Several Articles of the Constitution."*

SEC. 4. *That the election upon this amendment shall be conducted in the same manner and under the same rules and regulations as provided by the laws governing general elections; and, if a majority of the votes cast be in favor of the amendment, it shall be the duty of the Governor of the State to certify the amendment under the seal of the State to the Secretary of State, who shall enroll said amendment so certified among the permanent records in his office, and the same shall be in force, and every part thereof, from and after the date of such certification.*

SEC. 5. *That this Act shall be in force and effect from and after its ratification.*

Ratified this the 8th day of May, A.D. 1933.

THE CHANGES

Present sections 1 and 2 are embraced verbatim by proposed sections 1 and 2, except that the proposed section 1 adds, "A convention, when called, shall be limited to 120 delegates and such delegates shall be elected upon the basis of the membership of the House of Representatives."

The remainder of proposed article XII is entirely new, providing for the continuance of laws and offices in event the proposed Constitution is adopted, and further providing for the submission of the proposed Constitution to the voters at the next general election.

DISCUSSION

The proposed provisions are not changes, but merely provide for the eventuality of the adoption of the proposed Constitution. When adopted, (1) laws not repugnant to it remain in force; (2) the provisions of the present Constitution not embodied in it will, unless inconsistent with the new Constitution, continue in force as statutory law until repealed or modified, and (3) the new Constitution will not vacate any term or office made under the present Constitution and statutes pursuant to it. The provisions for the submission, the ballot, and the election are self-explanatory.

THE STRUCTURE OF LOCAL GOVERNMENT AND MUNICIPAL CORPORATIONS

Present Constitution

Art. VII. Municipal Corporations

Section 1. County Officers. *In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, the following officers: A treasurer, register of deeds, surveyor, and five commissioners.*

Sec. 2. Duty of County Commissioners. *It shall be the duty of the commissioners to exercise general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying taxes, and finances of the county, as may be prescribed by law. The register of deeds shall be ex officio clerk of the board of commissioners.*

Sec. 3. Counties to be Divided into Districts. *It shall be the duty of the commissioners first elected in each county to divide the same into convenient districts, to determine the boundaries and prescribe the name of the said districts, and to report the same to the General Assembly before the first day of January, 1869.*

Sec. 4. Townships Have Corporate Powers. *Upon the approval of the reports provided for in the foregoing section, by the General Assembly, the said districts shall have corporate powers for the necessary purposes of local government, and shall be known as townships.*

Sec. 5. Officers of Townships. *In each township there shall be biennially elected, by the qualified voters thereof, a clerk and two justices of the peace, who shall constitute a board of trustees, and shall, under the supervision of the county commissioners, have control of the taxes and finances, roads and bridges of the townships, as may be prescribed by law. The General Assembly may provide for the election of a larger number of justices of the peace in cities and towns, and in those townships in which cities and towns are situated. In every township there shall also be biennially elected a school committee, consisting of three persons, whose duties shall be prescribed by law.*

Sec. 6. Trustees Shall Assess Property. *The township board of trustees shall assess the taxable property of their townships and make returns to the county commissioners for revision, as may be prescribed by law. The clerk shall be, ex officio, treasurer of the township.*

Sec. 7. No Debt or Loan Except by a Majority of Voters. *No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.*

Sec. 8. No Money Drawn Except by Law. *No money shall be drawn from any county or township treasury except by authority of law.*

Sec. 9. Taxes to be Ad Valorem. *All taxes levied by any county, city, town, or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution.*

Sec. 10. When Officers Enter on Duty. *The county officers first elected under the provisions of this article shall enter upon their duties ten*

days after the approval of this Constitution by the Congress of the United States.

SEC. 11. GOVERNOR TO APPOINT JUSTICES. *The Governor shall appoint a sufficient number of justices of the peace in each county, who shall hold their places until sections four, five, and six of this article shall have been carried into effect.*

SEC. 12. CHARTERS TO REMAIN IN FORCE UNTIL LEGALLY CHANGED. *All charters, ordinances, and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this Constitution.*

SEC. 13. DEBTS IN AID OF THE REBELLION NOT TO BE PAID. *No county, city, town, or other municipal corporation shall assume to pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid of or support of the rebellion.*

SEC. 14. POWERS OF GENERAL ASSEMBLY OVER MUNICIPAL CORPORATIONS. *The General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions of this article, and substitute others in their place, except sections seven, nine, and thirteen.*

Proposed Constitution

ART. II SEC. 18. GENERAL ASSEMBLY TO PROVIDE FOR LOCAL GOVERNMENT UNDER GENERAL LAWS. *The General Assembly shall provide by general laws for the organization and government of counties, cities, towns and other municipal corporations, but shall pass no special or local law relating thereto. Optional plans for the organization and government of counties, cities and towns may be provided by law, to be effective when submitted to the legal voters thereof and approved by a majority of those voting thereon.*

[See also s. 5, Art. V, s. 7, Art. V, and s. 3, Art. V.]

THE CHANGES

Present Art. VII is omitted entirely, proposed s. 18, Art. II giving the General Assembly control over local government to be exercised through general, uniform laws. By virtue of proposed ss. 3 and 4, Art. XII, the present provisions would continue as statutory laws until repealed or modified.

THE PROBLEM

What flexibility should be given the powers of the General Assembly over local government units?

The Present Law

The present laws dealing with municipal corporations may be grouped under four heads:

1. *Constitutional Sections Having Only Statutory Effect*

Present ss. 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, of Art. VII list and provide for the election of county and township officers, specify duties of county commissioners and township trustees, give townships corporate powers, restrict the withdrawal of money except upon lawful authority, state when

officers enter upon their duties, empower the Governor to appoint Justices of the Peace of the county, and provide for charters remaining in force. Section 14 provides that the General Assembly may "modify, change or abrogate" any or all of these provisions; hence, all of these provisions have no more force than statutes.

2. *Statutory Regulations*
Numerous general laws (particularly C. S., c. 56 including the Municipal Corporation Act of 1917 and the Municipal Finance Act of 1921, and C. S., c. 49B, the Local Government Act of 1931) have been enacted under the residuary authority of the General Assembly.
3. *Portions of Art. VII Having True Constitutional Effect*
Present ss. 7, 9 and 13 require popular votes in order to increase debts or levy taxes for necessary expenses, demand that taxes be uniform and ad valorem on all property, and prohibit payment of debts in aid of the rebellion. These three sections constitute the only portions of Art. VII effective as constitutional mandates. These sections, 7, 9 and 13, with s. 6, Art. V, restricting general state and county tax to 15 cents on $100, present s. 30, Art. II, prohibiting the diversion of sinking funds, and s. 8, Art. VII, prohibiting the drawing of money except when authorized by law—all deal with revenue and taxation; for that reason they are discussed under "Art. V: Revenue, Taxation and Public Debt."
4. *Other Sections, Not under Art. VII, Affecting Local Government*
   (a) Special and local legislation of specified types is prohibited by s. 29, Art. II; (See "Minor Changes," sub-head "Legislative Dept.")
   (b) Sheriffs, coroners and constables are provided for and their methods of choices and terms of office described in s. 24, Art. IV; (See "Minor Changes" sub-head "Judicial Department.")
   (c) The General Assembly may enact as to local government units, unless the power to enact a particular measure is witheld by the Constitution, although a different impression of the effect of s. 37, Art. I has been expressed. (See discussion "The Residuary Power of the General Assembly.")

To summarize, the General Assembly now has full and absolute power to legislate concerning local government and local government officers, so long as it does not violate certain taxation provisions, resort to certain types of special or local legislation, or disturb the constitutional status of the sheriff, coroner, constable and clerk of the Superior Court. This wide and flexible power the General Assembly has freely exercised, notably with respect to public-local laws and general measures affecting the township system, which is now almost obsolete. The organization, administration and powers of local units, as well as the officers (excepting the four listed above), their compensation, powers and duties, are matters largely subject to statutory control at the hands of the General Assembly.

Conditions Suggesting a Revision

1. The structural weakness and impropriety of a constitutional article, ten

of the fourteen sections of which are in fact merely statutes;
2. The failure of the present Constitution to focus under one topic the major provisions bearing upon local government and local government officers;
3. The absence from the present Constitution of a single statement of general principle concerning the power of the General Assembly with respect to local government;
4. The need for uniform laws governing local government to this extent making the problems of local government state-wide rather than purely local, and the desire to substitute a few carefully drafted laws for the mass of public-local laws now confusing officials and absorbing the time of legislators.

Essentials of the Proposal

A Single Provision, Authorizing the General Assembly Generally

Proposed s. 18, Art. II, empowers the General Assembly to provide for the organization and government of municipal corporations, to be guided by three general principles and restrictions:
1. The provision for local government to be by general laws only;
2. Such provision not to be either special or local laws;
3. Compromise provisions—between special or local laws and general laws—in the form of optional plans for the organization and government of counties, cities and towns to be effective only upon a majority approval of the voters.

Thus, the rigidity of general laws is relaxed by allowing optional plans, but the essential advantage of uniformity is retained by the requirement of general laws, and by the prohibition of special or local laws. The organization and administration of municipal corporations would become purely statutory, such statutes being valid unless violative of these three constitutional requirements.

The Absorption or Transfer of Present Constitutional Provisions

(a) Restrictions upon debt and the manner of taxation at present governed by ss. 7 and 9, Art. VII would be provided for by ss. 6 and 7, Art. V. Present s. 13 dealing with debts of "the Rebellion" is omitted as obsolete. Present s. 6, Art. V, restricting the levy for state and county taxes, gives way to proposed ss. 3 and 4, Art. V, allowing the General Assembly to set up uniform tax systems with appropriate regulations of budgets and tax levies. Present s. 30, Art. II, prohibiting diversion of the sinking fund, is retained in proposed s. 8, Art. V.

(b) Present s. 29, Art. II, dealing with the prohibition of certain special or local legislation is continued, with amplifications, in proposed s. 19, Art. II. (See "Minor Changes" sub-head 2). Present s. 24, Art. IV, providing for sheriffs, constables and coroners, is omitted, leaving these offices to legislative regulation without definite restrictions. (See "Minor Changes," sub-head 4). Present s. 37, Art. I, defining the rights of the people and the residuary power of the General Assembly, is clarified, but not changed, by proposed s. 34, Art. I. (See "Minor Changes," sub-head 1).

The Proposal as it Effects Local Officers

Registers of deeds, county treasurers, county surveyors, county com-

missioners and township trustees (like sheriffs, Justices of the Peace, constables, coroners, and clerks of the Superior Court) are not specified in the proposed Constitution, but (unlike sheriffs, coroners, Justices of the Peace, constables and clerks) this involves no change in the authority of the General Assembly over these offices, since present s. 14, Art. VII, gives the same authority with respect to these offices as would proposed s. 18, Art. II, thereby enabling the General Assembly to regulate, or dispense with, these offices and officers, as it sees fit (for example, change the names of the offices, provide either for election or appointment, or diminish or increase their duties, terms or compensation). The same authority, which the General Assembly has possessed since 1868, as to registers of deeds, county treasurers, county surveyors, county commissioners and township trustees is continued without new restrictions or prohibitions.

The Omission of Sheriffs, Coroners, Constables and Clerks of Court

Provision for sheriffs, coroners and constables (Pres. s. 24, Art. IV) and for clerks of the Superior Court (Pres. ss. 15, 16, 17, 29 and 32, Art. IV) are omitted. These officers would, under the proposal, lose their constitutional status but would gain the opportunity to have their terms lengthened and the duties of their offices modified by the General Assembly. The proposal would give the General Assembly complete power to fix terms and determine the duties of these offices. Objections have been raised that under the proposal these officers, which have stood the test of practical usage, might be abolished or the power to choose the officers taken from the electorate and the offices made appointive. In reply it has been said that no change is made mandatory and no General Assembly will so completely disregard political expediency as to make radical reforms which would arouse the enmity of these officers or citizens generally, that changes would occur only through action of the chosen representatives of the electorate, that this would leave the counties free to make changes in offices in the interest of greater economy and efficiency, and that the best interests of the State require greater concern for the rights of the taxpayers than for the public officials themselves.

Criticisms of the Local Government Proposals

1. Under the proposal the General Assembly might abolish any or all of these offices, or might retain them, but make such offices appointive.
2. Special, local legislation allowing legal provisions to be shaped to specific local needs is prohibited in the interest of uniformity. Thus, (a) all legislation will be cast for a theoretical, average community but will fit completely no particular community, and (b) legislative experimentation with plans for particular communities with the view to later adoption as state-wide measures will be sharply limited, if not prohibited.

Suggested Advantages of the Local Government Proposals

1. The General Assembly now has, and has had for many years past, almost the same authority to alter or abolish these county offices which it would have under the proposal, and the same natural conservatism of the General Assembly and its consideration of practical politics would, as it has in the past, prevent any rash or ill-considered assault upon such offices.
2. Some small sacrifices in the way of minor, local preferences is always

necessary in order to gain the larger advantages of uniformity; the use of classification and optional plans will largely allow each community to choose by ballot its governmental machinery; general plans of organization may be offered the communities and those wishing to do so may experiment with the various forms, enabling later, mandatory plans drafted upon the basis of the experimental plans to be set up for statewide use. Thus, the proponents urge that all of the distinct advantages of the present system would be retained with many new advantages, especially those growing out of uniformity.

3.. A marked flexibility of power enables the General Assembly to make changes in local government in the interest of economy and efficiency, and relieves it of the burden of special or local legislation which now absorbs so much time of the General Assembly as well as individual legislators. Too, it would enable the General Assembly to delegate considerable power of local autonomy to units in the interest of self-government and desirable mergers and consolidations.

Quotations by Opponents and Proponents of the Proposals

"Under the proposed Constitution, the Legislature could confer on the Governor the power to appoint every officer in every county, town or municipality in the State. It can do that under the present Constitution with respect to some of them, but the present Constitution does preserve the right of the people to elect some of their local officers.

"I say the Constitution should continue to preserve this right of the people to elect at least a reasonable number of their officers. Mr. Maxwell, in his Raleigh speech of April 13, said that this is a legislative matter; that it should not be in the Constitution, but leave the Legislature free to determine as to whether all or part of the local officers shall be elected by the people or appointed.

"Indeed, in that debate, Mr. Maxwell said that my suggestion that the General Assembly might, under the proposed Constitution, take this power from the people was merely a "pipe dream" on my part. From this it would seem that he would not favor taking from the people the right to elect some, at least, of their local officers. If not, why not put that in the Constitution itself? And that a future General Assembly might make such a change, if given the power, is no more lurid a "pipe dream" than what has already happened—legislation which, it is claimed, has transferred from the State Auditor to the State Treasurer control of the auditing of State school funds. If a present General Assembly, whether thoughtlessly or otherwise, would do that, is it too rash to suppose that a future one might confer on the Governor the power to appoint all local officers, if a Constitution permits?"

—Attorney-General Dennis G. Brummitt.

"I agree that some of the officers of government should be appointed as well as some should be elected. I very strongly oppose what is known as "the short ballot" and the principle of that theory of government. The people should elect some of their officers both State and local, and their right to do so should be put in the Constitution itself. It is agreed that under the proposed constitution, if adopted, the General Assembly could take from the people the right to elect any of their local officers. That, to me, is another inseparable objection to its adoption.

"We should preserve local self-government in North Carolina."

—Hon. R. A. Doughton.

"The sections of Article VII of the present Constitution on County officers and organization, impose no restrictions upon the General Assembly. Section 14 leaves the General Assembly free to modify, change or abrogate them at will. They are now nothing more than statutory provisions. Under Article XII, section 3 of the proposed Constitution, these sections and others not inconsistent therewith will remain as statutory law, until changed by the General Assembly. It is true that sheriffs, coroners and clerks of court, provided for in Article IV, will be co-ordinated with commissioners, treasurers, registers of deeds, surveyors, justices of the peace and other County and Township officials; but why should there be any difference or preference in the constitutional status of these officials? When it is noted that most of this feared legislative power since the Constitution of 1776 has been lodged in the representatives of the people, where power to legislate resides, unless restricted, trembling hearts should take faith in our representative democracy.

"Largely under the inspiration for general laws in section 29 of Article II and section 4 of Article VIII of the present Constitution, many scattered sections on local government have been given simple and workable expression in Section 18 of Article II of the proposal which provides that the General Assembly shall pass general laws for the organization and government of municipal subdivisions, with optional plans, upon vote of the people. As at present, then, local government still will be largely in the hands of the General Assembly where it has always been. The tendency here as elsewhere is away from and not towards usually unobserved, detailed restrictions upon the representatives of the people. Section 18 of Article II of the proposed Constitution should be very helpful to the General Assembly in shortening and systematizing its work."

Hon. Burton Craige, of the Commission.

"By eliminating reference to the sheriff, the coroner and clerk of the court these officers are placed by the new Constitution in exactly the same category with other officers. Under the new Constitution the General Assembly might lengthen the terms of these officers. In the past the General Assembly has indicated it would favor a four-year instead of the present two-year term in the case of the sheriff.

"Essentially, therefore, the new Constitution would do nothing more with the status of officers of local government than to deprive the sheriff, the coroner and the clerk of the court of their special, present constitutional character. Since these officers appear necessary to government as it is operating now, the General Assembly is not likely to direct changes with respect to the offices that would reduce their serviceability or make their tenure less desirable to the encumbents."

—Chairman Capus M. Waynick, of the Senate Constitutional Amendments Committee.

Reference Material

APPENDIX A

The Present and the Proposed Constitutions: Minor Changes in Phraseology and Structure

(To be used for reference purposes in connection with the Parallel Table of the Present and Proposed Constitution. See Appendix A)

Preamble and Bill of Rights, Art. I

The changes throughout are minor ones, except ss. 9 and 10 (See discussion "Charges of Crime and Trial by Jury.") and s. 34 (See discussion "The Residuary Power of the General Assembly").

The Preamble, the Introduction and the first three sections of the proposal are shortened and re-phrased in the interest of more modern expression. References to the War Between the States are omitted. The familiar political principle "and that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed" is added to the present section. (Prop. s. 1) The State pledges that it will remain a member of the Union under allegiance to the Federal Constitution (Prop. s. 3), but is prohibited from ever paying debts incurred (1) "in the prosecution of the War Between the States," (2) for the emancipation of slaves or (3) evidenced by Reconstruction bonds "declared invalid by prior constitutions." (Prop. s. 2, Art. V.) That "elections ought to be free" is amplified by "safeguarded and protected . . . to guarantee complete and free expression of the public will." (Prop. s. 7). The abolition of "distinctions between actions at law and suits in equity" and the provisions respecting treason are transferred from the Judicial article. (Prop. ss. 17, 33.) "Slavery" is replaced by "involuntary servitude," in prohibiting human bondage. (Prop. s. 30). Change in the State boundaries is prohibited (Prop. s. 3, Art. XI). The other subjects treated in the present Bill of Rights (i.e. general warrants, guarantee of equal protection, due process, restraint of liberty and habeas corpus) are brought forward from the present Constitution without substantial change.

The portions of the present Constitution changed as indicated above follow:

The present Preamble expresses joy in the defeat of North Carolina in the War Between the States, and s. 4 denies the right to secede and pledges the support of the state in resisting such an attempt. S. 6 in detail outlaws the Reconstruction bonds "incurred in aid of insurrection or rebellion" and claims for the loss or emancipation of slaves.

At present, provisions as to distinctions between actions at law and suits in equity, as to treason against the state and prohibiting change of state boundaries are now in other articles, respectively, s. 1, Art. IV; s. 5, Art. IV; and s. 3, Art. XI.

Legislative Department, Art. II

The proposals respecting districting the State for Senators (Prop. s. 3), the Governor's veto (Prop. s. 21), the power of the General Assembly over local government (Prop. s. 18) and the prohibition upon members of the General Assembly to be appointed to offices created or made more attractive during their terms (Prop. s. 22) are discussed in detail under separate titles herein.

Vacancies. Under the proposed Constitution, when a vacancy in the General Assembly occurred, the proper Board or Boards of County Commissioners would fill the vacancies, thus preventing the expense, delay and troubles of special elections.

[Present s. 13 when vacancies occur requires the Governor to issue a writ of election to the proper county officials calling for a special election to fill the vacancy.]

Terms. The proposal states that terms shall begin at the time of election, and continue for two years or until their successors are elected. (Prop. s. 25)

[Present s. 14 only states that the term begins at the time of election, s. 27 referring to the two year term.]

Election of members of the General Assembly. Election day is changed from the first Thursday in August to Tuesday after the first Monday in November, but the date, as now, is left subject to change by the General Assembly. (Prop. s. 15)

Other Limitations upon Private and Local Legislation

The proposal continues all of the present limitations catalogued (pres. s. 29) and adds the following new restrictions:

There shall be no special-local laws

(1) Establishing courts inferior to the Superior Court,

(2) Regulating divorce and alimony—now prohibited by s. 10, or

(3) Altering names of persons, legitimating persons born out of wedlock, or restoring citizenship of criminals—now prohibited by s. 11.

The new prohibition of special, local courts would aid in the establishment of a uniform inferior court system and would halt the mushroom growth of varied and diverse courts. (See discussion "The Judicial Department.")

Miscellaneous Minor Changes

A general prohibition against perpetuities, a stronger prohibition of the misapplication of sinking funds, a requirement that

Indians not taxed be counted in the apportionment of members of the House of Representatives, a change of the title "Speaker *pro tempore*" of the Senate to "President *pro tempore*," and the requirement that the Governor shall sign all bills and resolutions except those which become law without his approval, are all embraced in the proposal. (Prop. s. 28, Art. I, s. 6, Art. V, and ss. 5, 8, 20, Art. II.)

[The portions of the present Constitution changed are: The requirement of 30 days' notice of private laws, which failed in practice, and is omitted. (s. 12) The prohibition of entails is left to be covered by the provision against perpetuities. (s. 15) The prohibition of misapplication of the sinking fund is improved. (s. 30) The present refusal to count Indians not taxed in apportioning Representatives is changed. (s. 6) The title of the "Speaker *pro tempore*" is changed. (s. 20) The Governor does not now have to sign bills and resolutions (s. 23).

The Executive Department, Art. III

The new provisions for the executive budget (Prop. s. 8) and for taxing salaries of executive officers (Prop. s. 15) are discussed herein under these titles. Present s. 17 requiring a department of agriculture, immigration and statistics is transferred to the proposed Agriculture article (Prop. s. 1, Art. XI). No other substantial changes in the executive department are made.

The Judicial Department, Art. IV

The major changes in this department are discussed under the chapter "The Judicial Department." The numerous minor changes are noted here:

Under the proposal the Chief Justice would preside upon impeachment of the Lieutenant-Governor. (Prop. s. 2) Jury trials would be governed by the sections under the Bill of rights (Prop. ss. 8, 9, 10 Art. I) (See discussion "Charges of Crime and Trial by Jury"). Special courts to cities would be prohibited. (Prop. ss. 18, 19, Art. II) Laws now in force would continue until changed by the General Assembly unless repugnant to the Constitution. (Prop. s. 3, Art. XII) No offices will be vacated immediately by the constitutional changes (Prop. s. 4, Art. XII)

[Present ss. 3 and 4, and 8 and 9 are consolidated in the proposal (Prop. ss. 2, 4). Provision for the waiver of trial is omitted. (Pres. s. 13) Authority to allow special courts to cities is omitted. (Pres. s. 14 permitted these but s. 29, Art. II prohibited them) Provision for present laws remaining in force is transferred. (Pres. s. 19) Provision for handling cases due to the old abolition of distinctions between actions at law and suits in equity are now unnecessary and are omitted. (Pres. s. 20) Fixing the time of the beginning of offices under the Constitution is not now necessary nor is congressional approval of the Constitution;

these provisions are omitted (Pres. s. 26). Fixing the terms of inferior court judges and clerks is not done, but left to the General Assembly. (Pres. s. 30) and provision for Justices of the Peace are omitted, leaving this to the General Assembly. (Pres. ss. 27, 28) (See discussion of these provisions under "The Judicial Department.") The prohibited vacating of offices by the Constitution is transferred (Pres. s. 33).]

The Omission of Sheriffs, Coroners and Clerks of the Court

Provision for sheriffs and coroners (Pres. s. 24) and for clerks of the Superior Court (Pres. ss. 15, 16, 17, 29 and 32) are omitted. These officers would lose their constitutional status, but would gain the opportunity to have their terms lengthened and the duties of their offices modified by the General Assembly, as this would give the General Assembly complete power to fix terms and determine duties of these offices. (See further discussion "The Structure of Local Government and Municipal Corporations.")

Revenue, Taxation and Public Debt, Art. V

This article is discussed at length under this title.

Suffrage and Eligibility to Office, Art. VI

The last three sections of this proposed article are substituted for the last four of the present article; these are discussed herein under the article title. Present s. 9 stating when this article shall become operative is omitted as unnecessary. No other changes in substance are involved.

Education, Art. VII

Both the present and the proposed articles on Education are re-printed herein, and discussed under three heads: Public Schools, State Board of Education, and Higher Education.

Homesteads and Exemptions, Art. VIII

Proposed sections 2, 7 and 8 allow homesteads to the extent of $1,000 to be exempted from taxes, continue the recent amendment freeing insurance benefits from liability for debts and allow the General Assembly to permit married women to convey their property without the husbands' consent; these are discussed under this title herein. The remaining sections of the proposal and the present Constitution are identical.

Public Welfare, Penal and Charitable Institutions and Punishments, Art. IX

The proposal embodies a complete re-draft of the present article, except the sections dealing with capital punishment; the

present and proposed provisions are re-printed under the article title and discussed in detail.

Militia. Art. X

There are no changes in this article proposed, except that present section 3 making the Governor Commander-in-chief with power to call out the militia, is transferred to the article dealing with the executive, Art. III, s. 7.

Agriculture, Industry and Miscellaneous Provisions, Art. XI

This proposed article combines present articles VIII and XIV with some omissions and some important changes laying emphasis upon new fields of legislation and public welfare not expressly recognized in the present Constitution; these are discussed in detail in the title-head of this article.

Municipal Corporations, Present Art. VII (No separate article proposed)

The present article, and the pertinent sections of the proposed Constitution, are re-printed and discussed under the title "The Structure of Local Government and Municipal Corporations."

Amendments, Existing Laws and Offices, Art. XII

The proposed article is much more elaborate than the present; both articles are re-printed and the results discussed briefly under this heading.

APPENDIX B

Table: The Proposed Constitution Parallelled by Sections to the Equivalent or Similar Section of the Present Constitution

Proposed		*Present*		*Proposed*		*Present*	
ART.	SEC.	ART.	SEC.	ART.	SEC.	ART.	SEC.
I	Preamble	I	Preamble	I	15	I	21
I	1	I	1	I	16	I	19
(None)		I	2	I	17	IV	1
I	2	I	3	I	18	I	20
(None)		I	4	I	19	I	22
I	3	I	5	I	20	I	23
V	2	I	6	I	21	I	24
I	4	I	7	I	22	I	25
I	5	I	8	I	23	I	26
I	6	I	9	I	24	I	27
I	7	I	10	I	25	I	28
I	8	I	11	I	26	I	29
I	9	I	12	I	27	I	30
I	10	I	13	I	28	I	31
I	11	I	14	I	29	I	32
I	12	I	15	I	30	I	33
I	13	I	16	XI	3	I	34
I	14	I	17	I	31	I	35
I	15	I	18	I	32	I	36

Proposed		*Present*	
ART.	SEC.	ART.	SEC.
I	33	IV	5
I	34	I	37
II	1	II	I
II	1	II	3
II	1	II	5
II	2	II	2
II	3	II	4
II	4	II	5
II	5	II	6
II	6	II	7
II	6	II	8
II	7	II	22
II	8	II	18
II	8	II	19
II	8	II	20
II	9	II	13
II	10	II	24
II	11	II	16
II	11	II	17
II	11	II	26
II	12	II	9
II	13	II	21
II	14	II	25
II	15	II	27
II	16	II	28
II	17	II	14
II	18	VIII	4
II	19	II	29
II	19	II	10
II	19	II	11
II	20	II	23
II	21	(None)	
II	22	(None)	
(None)		II	12
(None)		II	15
V	8	II	30
III	1	III	1
III	2	III	2
III	3	III	3
III	4	III	4
III	5	III	5
III	6	III	6
III	7	III	8
III	7	XII	3
III	8	(None)	
III	9	III	9
III	10	III	10
III	11	III	11
III	12	III	12
III	13	III	13
III	14	III	14
III	15	III	15
III	16	III	16
(XI,s.1)		III	17
IV	1	IV	2
IV	2	IV	3
IV	2	IV	4
IV	3	IV	6
IV	3	IV	7
IV	4	IV	8
IV	4	IV	9
IV	5	IV	10
IV	5	IV	22
IV	6	IV	10
IV	6	IV	11
IV	7	IV	21
IV	7	IV	25
IV	8	(None)	
IV	9	IV	12
IV	10	IV	23
IV	11	IV	31
IV	12	IV	18
(None)		IV	13
"		IV	14
"		IV	15
"		IV	16
"		IV	17
"		IV	19
"		IV	20
"		IV	24
"		IV	26
"		IV	27
"		IV	28
"		IV	29
"		IV	30
"		IV	32
"		IV	33
V	1	V	3
V	1	V	7
V	2	V	4
V	2	I	6
V	2	VII	13

Proposed		*Present*		*Proposed*		*Present*	
ART.	SEC.	ART.	SEC.	ART.	SEC.	ART.	SEC.
V	3	V	6	VIII	8	X	6
V	3	V	1				
V	3	V	2	(None)		XI	1
V	3	VII	9	IX	1	XI	7
V	4	III	4	IX	2	XI	8
V	5	VII	7	IX	2	XI	9
V	6	V	5	IX	2	XI	10
V	7	XIV	3	IX	2	XI	3
V	7	VII	8	IX	2	XI	4
V	8	II	30	IX	2	XI	5
(None, except as above)		V	1	IX	2	XI	6
		V	2	IX	3	XI	2
		V	7	IX	4	XI	11
VI	1	VI	1	X	1	XII	1
VI	2	VI	2	X	2	XII	2
VI	3	VI	3	X	3	III	7
VI	3	VI	4	XI	1	III	17
VI	3	VI	5	XI	2	XIV	4
VI	4	VI	6	XI	3	XIV	6
VI	5	VI	7	XI	3	I	34
VI	6	VI	8	XI	4	XIV	7
(None)		VI	9	XI	5	XIV	8
				XI	6	VIII	1
VII	1	IX	1	XI	6	VIII	2
VII	2	IX	2	XI	6	VIII	3
VII	3	IX	3	(None)		XIV	1
VII	4	IX	4	(None)		XIV	2
VII	4	IX	5	V	7	XIV	3
VII	5	IX	8	III	10	XIV	5
VII	5	IX	9				
VII	5	IX	11	XII	1	XIII	1
VII	5	IX	12	XII	2	XIII	2
VII	5	IX	13	XII	3	(None)	
VII	6	IX	10	XII	4	(None)	
VII	7	IX	15	XII	2(5)	(None)	
VII	8	IX	6	XII	3(6)	(None)	
VII	8	IX	7	XII	4(7)	(None)	
VII	9	(None)		XII	5(8)	(None)	
(None)		IX	14	II	18	VII	1
				(None)		VII	2
VIII	1	X	1	(None)		VII	3
VIII	2	X	2	(None)		VII	4
VIII	3	X	3	(None)		VII	5
VIII	4	X	4	(None)		VII	6
VIII	5	X	5	V	5	VII	7
VIII	6	X	8	V	7	VII	8
VIII	7	X	7	V	3	VII	9

Proposed		*Present*		*Proposed*		*Present*	
ART.	SEC.	ART.	SEC.	ART.	SEC.	ART.	SEC.
(None)		VII	10	(None)		VII	13
(None)		VII	11	II	18	VII	14
(None)		VII	12	ART.	SEC.	ART.	SEC.

APPENDIX C

Sources and References

In addition to the unpublished manuscripts acknowledged in the "Introduction" and the sources listed after "An Historical Note on the Constitutions of North Carolina: Past, Present and Proposed," frequent reference has been made to the following sources and authorities, which will be of value to those wishing to pursue this study in greater detail:

Proceedings of the North Carolina Constitution Commission, 1931-32. (Charles B. Aycock, Secretary, Raleigh, N. C.) 419 pp., including a number of studies made for the Commission by the University of North Carolina, and the Duke, Law Schools.

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